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POLITICAL SCIENCE QUARTERLY

NEO-CLASSICAL ECONOMICS IN BRITAIN

I

NEO-CLASSICAL economics in Britain is most conveniently dated from the work of Stanley Jevons. For it was he who first tilted the balance in value theory from cost to utility, applied mathematics to the supply and demand curves, and conceived the project of building with elaborate statistical material an exact science. This science he defined as "the mechanics of human interest." There are not a few passages, especially in the opening chapters in his *Theory*, which show how near his mind came to a broader and more balanced statement of the utilitarian calculus than that which he actually took.

"Political Economy must be founded upon a full and accurate investigation of the conditions of utility; and as we understand this element, we must necessarily examine the character of the wants and desires of men." Now "utility" taken broadly in any utilitarian system should include disutility, or cost, since this clearly comes into the wants and desires of man. The elementary psychology by which Jevons explains the utility of consumption with its grades of variety and intensity is equally applicable to production. In this very book, indeed, Jevons made an elementary excursion into the intensity of labor, relating it to hours of labor etc., and in his Preface he definitely states, "In this Work I have attempted to treat Economy as a calculus of Pleasures and Pains." Yet nowhere did he link up into a single calculus the pleasures and pains of the processes of production and consumption. No, "The whole theory of

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Economy" as he saw it "depends upon a correct theory of consumption" (p. 47). In the last chapter of his *Theory* he says, "The great problem of Economy, may, as it seems to me, be stated thus: Given, a certain population, with various needs and powers of production, in possession of certain lands and other sources of materials; required, the mode of employing their labour so as to maximize the utility of the produce" (p. 255). It seems curious that he should have failed to add the words "and so as to minimize the disutility of producing it." Here was a real turning point in economic theory. Had Jevons worked out his prefatory promise the study might have been put upon a sound basis of utility conceived as human welfare; the utilities as well as the disutilities of production might have been put into the account, together with the disutilities which attend certain forms and portions of consumption.

How far the definitely hedonistic turn of the utilitarianism which Jevons had taken on from the Mills and Bentham, would have served him for a satisfactory art of human welfare, may be open to discussion. But such an application of the utilitarian method would have been a great advance along the road to a science for the interpretation of economic processes in terms of human well-being.

It might, however, have been expected that followers of the Jevonian method would have repaired the defects of their master. Had they done so, the Jevonian theory of value, resolving wealth into the various degrees of utility or enjoyment it furnishes to consumers, might have been the harbinger of a human political economy in Britain. Disinterested Science had only to take two tolerably obvious steps in order to construct a valid basis of a Science or Art of Economic Welfare. The first was to apply to the production or supply side of the equation of value the same subjective analysis as was applied to the consumption or demand side. If you are to evaluate a given quantity of concrete wealth, you must ask two related questions, how much utility it furnishes in its consumption, and how much disutility it involves in its production. For only by this double analysis can you realize what this wealth is really worth n human terms of net satisfaction or enjoyment. For, if each

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consumer, in purchasing a quantity of any article for consumption, gets for the last shilling of his expenditure a utility or satisfaction that is "just worth while", it follows that for every prior shilling of that expenditure he gets a positive gain increasing in magnitude as it approaches the first shilling, the utility of which may, if the article in question be a necessary of life, be infinite. This concept of a surplus or fund of positive gain for consumers is, of course, equally applicable to the cost or supply side of the problem of purchase. If it is just worth while for the producer to put forth the last and costliest unit of productive effort incorporated in a supply which fetches a price of one shilling per unit, then on every earlier unit of productive effort he gets, in the shilling he receives, something more than an equivalent for that effort, i. e., a producer's surplus, measuring the diminishing subjective cost of the earlier units. In theory, at any rate, the first unit of this output of productive energy may be considered to have a vital cost that is immeasurably small.[1]

Such might seem to be an obvious first step towards a scientific hedonist calculus. The second step would have been an orderly correlation of the results of this double analysis, a setting of the human costs of production represented by a stock of concrete goods against the human utilities of their consumption—a profit and loss account. In the process of both analyses it would have become evident that, though costs predominated in production, and utilities in consumption, some elements of costs found a place in consumption, some elements of utility, or satisfaction, in production. Wider inequalities of distribution would signify that some goods passed the barrier which separated utility from satiety, while certain kinds and amounts of productive energy are pleasurable in their output. In the analysis of any given stock of goods, therefore, it would be the net utility of consumption that would be set against the net disutility of production.

[1] This producer's surplus must be distinguished from that which arises from the possession by a producer of some specially favorable position enabling him to produce his whole output, including its last unit, at a lower subjective cost than his competitors.

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This analysis would inevitably have led to a new reorientation of the problem of distribution. For it would have become evident that the total amount of satisfaction, enjoyment, welfare, attaching to any given quantity of wealth, would vary with the ways in which the efforts of making it and the enjoyments of consuming it were apportioned among the members of the community. Such an apportionment, or distribution, of productive efforts as would involve the smallest aggregate of disutility in making it, and such apportionment, or distribution, of consumptive opportunities as would yield the largest aggregate of enjoyment, would evidently maximize the "welfare" which attaches to any given quantity of goods.

Here a third step in the new subjective science might have been expected, involving a literally vital change in the method of the hedonist calculus. It might have been recognized that the costs and utilities, attaching to the production or consumption of any set or class of goods, cannot be discovered by a separate analysis of the processes of producing and consuming these goods. For these particular costs and utilities are associated with others derived from other sets of goods in a standard of production and a standard of consumption. The latter standard is self-evident in its bearing on the hedonist calculus. The utility of any single article of consumption depends on, and in some measure varies with, the utility of other articles incorporated in the personal standard of consumption. The division of labor has, however, gone so far in modern industry as to obscure what should be the equal significance of a human standard of production; a varied day's work should by its organic composition reduce the total disutility and incorporate elements of positive utility. To some extent this variety of work can be made to subserve efficiency and total productivity within the factory system: in other cases it requires a sufficient quantity of leisure to enable workers, earning their main livelihood in some single craft or routine process, to choose subsidiary occupations that provide relief elements and give play to otherwise thwarted instincts of workmanship in body or mind. This conception of an interrelation between standards of work and of consumption, based upon a comprehension of the har-

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monious needs and satisfactions of man as an organism, might have been evolved from the crude beginning of the Jevonian theory of value.

An advance along these lines might have been expected to produce a subjective Science and Art of Economic Welfare which would have realised Ruskin's assertion "All Wealth is Life", and pointed the way to a general social economic movement of reform.

This did not happen. It was not for want of intellectual leads. As early as 1854 Giessen published a book[1] containing an outline of this utilitarian calculus of utility and disutility. But nowhere in Britain did the method receive much attention. This was partly due to the concentration of most economists upon the conflict between "cost" and "utility" theories of value as the central problem of Economics. Not until Marshall had achieved a peace treaty between these combatants by showing how the "final cost" principle and the "final utility" principle are undoubtedly component parts of the one all-ruling law of supply and demand, each compared to "one blade of a pair of scissors", did English orthodox economics attain the equilibrium needed for resolving wealth into the sum of its utilities and disutilities.

But even then this subjective or human interpretation of wealth was sedulously avoided. Though Marshall opened his *Principles of Economics* with the comprehensive statement, "Political Economy or Economics is a study of mankind in the ordinary business of life; it examines that part of individual and social action which is most closely connected with the attainment and with the use of the material requisites of well-being", he nowhere proceeds to correlate the two processes of "attainment" and "use" from the standpoint of well-being. The elaborate studies of supply and demand curves in the determination of prices and the measurement of values in the various acts of purchase which constitute economic book-keeping, so thoroughly absorbed most of those who accepted the "scissors" metaphor[2] as to keep them upon a mechanical plane

[1] *Gesetze des Menschlichen Verkehrs.*

[2] "The 'cost of production' principle and the 'final utility' principle are un-

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of inquiry precluding any close psychological analysis into the human values affecting the constitution of these curves.

Though Marshall recognized more clearly than any of his academic predecessors the delicacy and intricacy of the choices and adjustments that went into the operations of the economic system through acts of production and consumption, he made no serious and continuous attempt to go behind these choices in order to convert them into terms of the human satisfaction which underlay them. Nowhere do we find in his work any attempt to express economic income in human welfare. Doubtless the sense that human well-being is the end of economic activities may be said to pervade his work. But it is never formulated.

It seemed as if this reconcilement of Economic Science with humanity was the definite task to be undertaken by Marshall's pupil and successor, Professor Pigou. The title of his work, *The Economics of Welfare*, suggests that a full and formal examination of the contribution of economic art to human well-being will be made. In his opening chapter this purpose from time to time flickers before our eyes. Mr. Pigou clearly recognizes that the subject matter of Economics (whether as a Science or an Art) is a part of welfare. Wealth, in other words, he regards not as a mere aggregate of concrete products, but as a body of satisfactions. He carries his subjectivity so far as to insist that "welfare includes states of consciousness only and not material things" (p. 10).

There are passages which might suggest that "the states of consciousness" are to be submitted to some objective test of "the desirable", in the sense of a contribution to "the real good" of a man, or a society, and not in the sense that they are actually desired. But these are evidently unintended departures from his explicit declaration that his Economic Science is "a positive science of what is and tends to be, not a

doubtedly component parts of the all-ruling law of supply and demand: each may be compared to one blade of a pair of scissors. When one blade is held still, and the 'cutting' is effected by moving the other, we may say with careless brevity that the cutting is done by the second; but the statement is not one to be made formally, and defended deliberately."—Marshall, *Principles*, 4th edition, p. 569.

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normative science of what ought to be." In a word, we are to deal with current satisfactions.

The subject matter of Economics being thus a part of welfare, we ask what part, and are told "that part of social welfare that can be brought directly or indirectly into relation with the measuring rod of money" (p. 11)—an ominous suggestion of a return to the position that money is the measure, not merely of value, taken in its market meaning, but of that part of human values contained in welfare. With Professor Cannan, who also shows coy hankerings after the humanization of economics, he recognizes that no sharp demarcation is possible between economic and non-economic satisfactions. "Nevertheless, though no precise boundary exists, yet the test of accessibility to a money measure serves well enough to set up a rough distinction. Economic welfare, as loosely defined by this test, is the subject matter of economic science." "Rough distinctions" and "loose" definitions are perhaps no very strong foundation for a scientific study which in its detailed superstructure aims at nicety of measurements. But it is undoubtedly true that the only possible demarcation for economic phenomena is to confine them to things that are bought and sold, and we may presume that it is the welfare related to such marketable things that Mr. Pigou proposes to investigate.

But, though we may seem to be able at any given time and place thus to distinguish concrete economic goods from non-economic goods, when we turn to examine them, as they meet and even join in the consciousness of which they are "states of mind", new difficulties crop up. If we are to correlate the part, economic welfare, with the whole, human welfare, we must at any rate keep the same meaning for the term "welfare". We had supposed that, as the "ought", or normative law, was to be excluded from economic welfare, it must also be excluded from human welfare, reduced *pro hac vice* to the currently desired.

But hardly is this established than we come (p. 12) to a discussion of the objection that "an economic cause may affect non-economic welfare in ways that conceal its effect on economic welfare", illustrated by the damaging reactions which

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excessive industrialism may exercise upon the appreciation and cultivation of "the beautiful in nature or in art" forming "an important element in the ethical value of the world." Surely any such assessment of ethical value would seem to involve an introduction of the normative element just expressly excluded from the province of economic science.

In further discussion of the relations between economic and non-economic welfare, Mr. Pigou adduces two considerations, which, had he followed out their implications, would have led him far upon the road to a complete utilitarian calculus. That calculus requires, as we see, first, the recognition of satisfactions and dissatisfactions of production in their bearing upon economic and non-economic welfare; secondly, the interaction between this set of satisfactions and dissatisfactions and the set on the consumption side of the equation. Economists had hitherto failed in two ways, first, by looking exclusively to the yield of satisfactions from the consumption (or further application to production) of the real income of the community, secondly, by omitting to take account of the satisfactions of production (when they made their tentative analysis of human costs) or of the dissatisfactions of certain sorts and quantities of consumption.

Now Mr. Pigou seems in his opening analysis to recognize that the ways in which income is earned and spent have important reactions upon "non-economic welfare". On the production side "the surroundings of work react upon the quality of life. Ethical quality is affected by the occupations—menial service, agricultural labour, artistic creation, independent as against subordinate economic positions, monotonous repetition of the same operation, and so on—into which the desires of consumers impel the people who work to satisfy them" (p. 15).

"In the Indian village collaboration of the family members not only economizes expenses but sweetens labour. Culture and refinement come early to the artizan through his work amidst his kith and kin."

Now while these indirect results of conditions of labor may be classed as "non-economic", why should those conditions be so regarded which directly raise or lower the dissatisfaction, or human cost of production?

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Then again, Mr. Pigou affirms that "non-economic welfare is liable to be modified by the manner in which income is spent. Of different acts of consumption that yield equal satisfactions, one may exercise a debasing, and another an elevating influence" (p. 17). Here once more he brings to bear upon non-economic welfare a normative standard, which really puts his whole calculus out of gear. Either one must accept provisionally current standards of "the desired", alike for economic and non-economic welfare, or frankly apply to both fields some normative science of human values. Mr. Pigou recognizes formally a part of his difficulty though he does not appreciate its magnitude. For he argues (p. 18), "These very real elements in welfare [i. e., "ethically superior" interests in literature and art etc.] will, indeed, enter into relation with the measuring rod of money and so be counted in economic welfare, in so far as one group of people devote income to purchasing things *for* other people. When they do this, they are likely to take account of the total effect, and not merely of the effect on the satisfactions of those people—especially if the said people are their own children." In other words, here the ideally desirable is substituted for the actually desired. The importance of this distinction, fatal to Mr. Pigou's economic calculus, is seen when we remember that quite twenty-five per cent of the current income of the country is spent by public authorities in this way. The state's attitude both to production and consumption it is impossible to correlate with the estimate of economic welfare on the basis of "a positive science of what is and tends to be, not a normative science of what ought to be." The parent in spending money on his children, the philanthropist in doing good to others, and the state in its public expenditures, are manifestly concerned with "what ought to be."

It seems impossible to deal with a national income by excluding a normative science and sticking to the current standard of the desired. The cleavage between economic welfare estimated on the latter standard, and non-economic, or total, welfare estimated on the former, is wholly inadmissible. Either we must take actual current satisfactions and dissatisfac-

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tions for our standard, apply them to both sides of the economic question, and extend the same standard to non-economic welfare, or we must apply to the entire area of consideration some normative method based on ethics or biology. The attempt to reconcile these two standards must land us in intellectual chaos.

Mr. Pigou seems to have some inkling of his difficulty for he admits that "any rigid inference from effects on economic welfare to effects on total welfare is out of the question." He falls back, however, upon a presumption, "an unverified probability" that total welfare will probably vary with economic welfare in direction, though not in magnitude. This means that more wealth per head is presumed to carry more total satisfaction, irrespective of the methods of production or the distribution of its toil, upon the one hand, the nature of the wealth, its distribution and the uses or abuses of its consumption on the other hand. The presumption is, I think, open to grave doubt, at any rate until it is shown that with growing wealth there is some normal tendency towards lightening the day's work for the average worker, and towards more, not less equalization, in the distribution of incomes.

I have laid stress upon the failure of English economists to interpret economic welfare with equal regard to the production and consumption processes. This oversight is formally corrected by Mr. Pigou in his Chapter IV stating "The relation of economic welfare to the National Dividend." There he lays down the doctrine that: "The quantity of economic welfare associated with any volume of the dividend depends, not only on the satisfaction yielded by consumption, but also on the dissatisfaction involved in production" (p. 43). One may complain of the assumption that no positive form of satisfaction involved in production is recognized, but the passage does appear to furnish a consistent standard for measuring economic welfare as he defines it. You would assess in economic welfare any stock of goods according to the total satisfaction it afforded in its consumption over the net dissatisfaction attending its production.

But having given this formal recognition to the part which

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disutility plays in economic welfare, Mr. Pigou proceeds to deal with the national dividend, as a concrete annual product, *exclusively with regard to the effects of its distribution, in the shape of income*, upon economic welfare. The differences in amount of economic welfare, attendant on various shifts in distribution of income, and the special problems of state or business machinery by which changes in distribution may be brought about, occupy almost the whole of his long treatise.

Nowhere is there any further recognition of the truth that the economic welfare of a man, or a class, or a nation, is dependent on, consists in and varies with, the conditions of the production of the national dividend, as much as upon its consumption.

Economic welfare is thus in fact confined to utilities or satisfactions of consumption. And these utilities are to be assessed in terms of current desirability. Mr. Pigou does not seek to go behind existing standards. For purposes of economic welfare a dollar's worth of dope equals a dollar's worth of food or other necessary of life, for "of different acts of consumption that yield equal satisfactions, one may exercise a debasing, and another an elevating influence." Such bad consumption reacts apparently upon the quantity of welfare but not of economic welfare! This is made abundantly clear on page 28: "the first asserts that additions to work-people's wages do not really lead to economic welfare, but are merely dissipated in worthless forms of exciting pleasure. This objection is, indeed, obviously irrelevant, when economic welfare is defined as we have defined it."

The strongest and most serviceable part in Mr. Pigou's analysis consists in showing with precision how economic welfare, connected with the consumption of any given body of resources, increases the more evenly this body of resources is distributed between them. It would seem to be an obvious corollary, that economic welfare, connected with these same resources, increased the more evenly the human costs of producing them were distributed between the producers. But though, several times in elaborating his argument, Mr. Pigou introduces parenthetically some consideration bearing upon

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economic welfare from the production side,[1] some tough barrier in his thinking prevents him from giving it its proper place as a factor in economic welfare. What this barrier is remains a mystery. Perhaps, however, light is thrown upon it by the curious treatment of "costs" which has crept into the Cambridge doctrine, formerly confined to the theory of foreign trade. The most naïve statement of this doctrine is thus presented by one of the ablest of the young Cambridge economists, Mr. W. D. Henderson.

> The real costs which the prices of a commodity measure are not absolute but comparative. Marginal money costs reduce themselves in the last analysis to the payments which must be made to secure the use of the requisite agents of production. These payments *tend* to equal the payments which the same agents could have commanded in alternative employments. The payments which they could have commanded in alternative employments tend in their turn to equal the derived marginal utilities of their services in those employments. It is thus the loss of *utility,* which arises from the fact that these agents of production are not available for alternative employments, that is measured by the money costs of a commodity at the margin of production.[2]

Ignoring the difficulty of understanding in what possible sense "payments" can tend to "equal" utilities, one wonders why it should seem even plausible that it is easier to compare respective "losses of utility" in other goods than costs or disutilities involved in producing the actual goods that are the objects of exchange. The doctrine that the real cost of anything is the forgone utility of other things[3] perversely rules out all human considerations related to the supply side of exchange, by substituting an indirect and strictly irrelevant test for a direct and

[1] E. g. p. 343. In discussing the further operation of utilities he notes that as regards "the position of a public servant as it owns attraction in itself and also makes appeal to altruistic motives" there is created a new value "in the extra satisfaction which the said engineer or manufacturer derives from the fact of serving the public."

[2] *Supply and Demand*, pp. 164–5.

[3] "The real cost of *anything* is the curtailment of the supply of other useful things which the production of that particular thing involves." *Supply and Demand*, p. 166.

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relevant one. It reminds one of the famous definition of sugar as "the stuff which makes tea nasty when you don't put any in."

This change-over in post-Jevonian theory from the producer point of view of the older classical political economy (where consumption had no valid place and no utility save as it was "productive", i. e. contributory to the end of promoting more production) to this modern stress upon the utility of consumption, as not only the practical end of the economic costs, but the first principle of economic theory, is often claimed as a great advance in humanism. Utility, as issuing from wealth, real income, is now in the saddle. Economists concern themselves more and more with the problems of increasing the output of concrete goods, and of enlarging their utility by better distribution. But the twist of mind which leads so many of them to hold that it is easier and more relevant to welfare to evaluate goods for purposes of exchange, or for inherent satisfactions, by confining attention to the utilities of consumption they embody, is the more amazing since their professed master, Dr. Marshall, performed his greatest single service to economic theory in his balanced interrelation of supply and demand prices and the equality of their importance in the determination of value.

Nor is this disparagement of the human interpretation of costs, and the disposition to transmute them into utilities, confined to British economists. Here is Professor Taussig declaring that, "In the last analysis, the income of an individual, or of a community, consists of a sum of utilities steadily accruing from its store of economic goods. It consists, that is, of the total utility of all its goods."[1] So Professor Taussig, like Professor Pigou, appears to envisage economic welfare entirely in terms of concrete goods shedding utility in processes of consumption.

It is particularly strange that this one-sided theory should have attained such vogue, at a time when practical reformers in every industrial country devote so much attention to problems

[1] *Principles of Economics*, vol. I, p. 134.

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of lessening the human costs of production: by shortening hours of labor; restricting the employment of younger and weaker workers and imposing intervals of rest, or of alternative work; lightening the muscular and nervous strains; improving factory hygiene; and otherwise trying to reduce the net human costs of production by what is significantly called "welfare work".

The failure of the post-Jevonian, or neo-classical economists of Britain and of the United States to humanize economic theory, in the sense of finding methods of expressing concrete economic goods and processes in terms of human welfare, is contained in four chief defects:

First, their failure to interpret the human welfare attaching to a concrete body of wealth, (a real dividend) so as to include equally the utilities and disutilities of producing them and of consuming them, with due regard to the actual conditions of the producing and consuming processes.

Secondly, their failure to realize adequately the difficulties attending the processes of applying "the measuring rod of money" to: (a) the varying satisfactions or dissatisfactions of different persons at the same time and the same persons at different times; (b) the separate measurement of different kinds of satisfactions or dissatisfactions in a standard working day or a standard of consumption.

Thirdly, their failure to keep consistently to the professed assessment of economic welfare and the total welfare into which it enters, in terms of present desiredness.

Fourthly, their hesitant attitude in assessing, as elements of the National Dividend, Personal Incomes and Economic Welfare, the products of public services, such as health, education, insurance, art, recreation.

Some of these defects I have here sought briefly to expose. Others are best reserved for discussion in a more formal criticism of Marginalism.

Our immediate problem is to try to understand how it came about that the neo-classical school of British economists failed to develop the subjective treatment introduced by Jevons, so

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as to produce a consistently human theory of wealth. It was doubtless partly due to the force and vividness with which the objective structure and processes of the industrial system imposed themselves upon observers. This objective system of the business world with its productive processes and its markets absorbed so much attention that little was left for considering the consumptive processes, though the utility associated with them figured as the formal goal of economic activities. Consumption only figured indirectly through demand curves. More and more the neo-classical economics concerned itself with the determination and movement of prices within the limits of the business world. How strong the influence of this school has been is well illustrated in the recent work of the Swedish economist, Gustav Cassel, whose *Social Economy* resolves all economic problems into questions of *price* based on scarcity.

This concentration upon price movements and their causes and effects in terms of the business system has been due partly to the discovery of a fascinating field for abstract reasoning. It is not without significance that so many of the younger school of economists in England and America received their academic training in mathematics. For, as will presently appear, the notion that all qualitative differences can be resolved into quantitative may be regarded as the modern substitute for that economic man moving in the "simple system of natural liberty" by which vested interests defended themselves against dangerous assaults in the earlier era of modern capitalism. The mathematical mind, set to work upon supply and demand curves and the conditions which regulated them, rapidly constructed an abstract economic system operated by the movement of identical and infinitesimal units whose accurate adjustment produced a new "economic harmony". It was not necessary to assume a society composed of "economic men" with completely informed selfishness as their single motive. A series of minute adjustments at the margin of each supply and demand will do all that is required. This is provided chiefly by the intelligent application of new units of capital, labor, and other factors at the several points of vantage in the system, and by the gradual letting down of productive power

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at points where less is wanted. This unceasing movement of insensible increments on the producing and consuming sides tends both to put the technically right amount of the factors of production in each employment for the maximization of the product, and to distribute that product in accordance with the separate productivity or economic worth of each factor of production. It is not contended that there are no obstacles to the accurate operation of this "tendency". But Science, which can only deal with tendencies, may legitimately ignore such friction as is itself immeasurable!

The acceptance of this new method and instrument for economic service is due, however, not merely to the craving of scientific men for exactitude. Its immanent conservatism recommends it, not only to timid academic minds, but to the general body of the possessing classes who, though they may be quite incapable of following its subtleties of reasoning, have sufficient intelligence to value its general conclusions as popularized by the press.

Disconcerted by social and political "attacks on property" and by socialist propaganda, sometimes also by social compunctions relating to the unfair apportionment of this world's goods, they not unnaturally look with favor upon the line of defences which this new political economy provides.

Now for their purpose the main use of this new doctrine is that it serves to dispose of the charge against capitalists of exploiting labor. In England the best example of this treatment is given by Mr. Wicksteed, in a work which is at once the most complete and the most naïve exposition of Marginalism.

If the final unit of capital, labor, or any other factor in a business or an industry, gets just as much in value as it produces (and it cannot get more or less, for otherwise a larger or a smaller number of units would be employed), then there is no surplus over and above these necessary marginal payments. For since the marginal units are neither more nor less productive than other units, but only marginal in the sense that they represent the limit to the total number employed, all units are equally productive and equally remunerative. As Mr. Wicksteed puts it:

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We now see once for all that the marginal distribution in our sense (that is to say, the distribution of the product amongst the claimants in proportion to the significance of the addition or withdrawal of a small increment at the margin determined by the present supply) exhausts the whole product.

Again:

It is not open to anyone who understands the facts to argue that when, by a marginal distribution, every factor, reduced to the common term, has been satisfied, there remains any residue or surplus to be divided or appropriated. The vague and fervid visions of this unappropriated reserve, ruling upward as we recede from this marginal distribution, must be banished forever to the limbo of ghostly fancies.[1]

Not only is there no unearned surplus to fight over among the owners of several factors of production, but substantial justice is done to every separate producer by paying him "what he is worth"—that is his market value on a fair and equal computation under existing economic conditions.

If it is a fact that the most miserable earners of starvation wages are getting *all their work is worth,* the lamentable fact of the existence of a vast population worth so little must, when once recognized, force us to face the question how we can make them worth more.[2]

There are two main ways of "making people worth more."

One is breeding, rearing, training and educating them from the beginning, so that they shall possess the vision, the habits and the particular skill which are likely to make them worth most. . . . The other is to shift them to places and conditions in which they will be worth more than where they are.

In a word, the only way of enabling the workers, collectively or individually, to get more is by increased productivity. Dr. J. B. Clark expounds in America the same simple doctrine of natural equity, showing how, along the lines of this marginal analysis, "the market rate of wages (or interest) gives to labor

[1] *The Commonsense of Political Economy*, pp. 572–3.

[2] *Ibid.*, p. 345. (Italics mine.—J. A. H.)

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(or capital) the full product of labor (or capital)." And not only to collective labor, but to the individual worker, for—"Each man accordingly is paid an amount which equals the total product that he personally creates."[1] In what sense a man's product can equal his pay, and how a man's product can be measured, are questions rightly relegated to a closer study of the curious logic of Marginalism. Here we are mainly concerned to show how the emergence of this doctrine in economic science is accommodated to the requirements of the influential classes for the defence of their economic interests.

It supplies a complete substitute for the wage-fund-cum-Malthusianism of the older Classical Economics. For, if everybody gets for his labor, or any other factor of production, just what it is worth, and can only get more by making it more productive, since the payment to each of "what he is worth" exhausts the entire product, leaving no surplus over which to quarrel—why, we are living in the best of all possible economic worlds, and anyone who, by agitation and wilful misrepresentation, tries to incite envy or stir up discontent, is as wicked as he is foolish. The charge of profiteering is meaningless, and combination can get nothing solid for the workers.

Leaving aside for the moment the question of the truth or falsity of this doctrine, consider how beautifully it fills the requirements of conservatism! What a rebuke alike to the envy and class hatred of the workers, and what an exposure of the folly and futility of ca' canny! What a sedative to the foolish compunction astir in the minds of many men of great possessions when they survey the condition of the poorer classes! And all this got out of a refined application of Butler's famous tautology that—

> ". . . . . the value of a thing
> Is just as much as it will bring."

equity being imported into the convincing proposition: "Every man gets what he can get."

The earlier uses of margins, as we see, made for the dis-

[1] *Essentials*, p. 92.

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closure of rents and quasi-rents, not only in the case of land, but in other factors of production, yielding a large composite body of surplus, unearned, unnecessary payments, capable of being diverted by appropriate action either into higher wages or fuller revenue, while the Jevonian calculus of subjective utilities visibly led towards a still more dangerous revelation of the inequality of apportionment of satisfaction in the processes of production and distribution. The effect of the later Marginalism has been to sidetrack both these inconvenient applications of theory, and to substitute one admirably adapted for the re-establishment of confidence in the natural equity and efficiency of the economic system as it stands.

This statement I propose to support by a closer account of the logic of the use of margins.

II

Human Welfare in Neo-Classical Economics

In discussing the progress of Neo-Classical Economics in Britain, I have laid stress upon the increasing tendency to endeavor to convert Economics into a purely quantitative science. For the attainment of this object there are two chief prerequisites. The first is that the material measured shall be minutely divisible, its quantity growing or dwindling by infinitesimal units. This is the essential for the use of curves. The second is that all apparently qualitative differences shall be treated as capable of resolution into differences of quantity, by reference to some common standard. These two assumptions will be found to underlie that marginal calculus by which it is sought to secure for economics something of the authority of an exact science, as well as to render it a serviceable instrument for the defense of the existing economic system by displaying the economy and harmony of its normal working.

The marginal concept, as first employed by an extension of the Ricardian application in grading the productive qualities of the several factors of production, has a definite use. Just as in the utilization of the available supply of land for wheat or any other agricultural purpose, there is some land which, at the

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price of the product ruling in the market, it is just worth while to employ (marginal land), so with the existing supply of concrete plant or other capital available in a given industry, where it varies in efficiency, some of it will be only just worth while employing at a given price level for the product. If that price level should fall, the marginal capital (like the marginal land) will pass out of use. Similarly as to labor, where the available supply exceeds the normal demand, there will at any time be a marginal grade of workers just worth employing.

It is sometimes alleged that, regarded from the standpoint of payment, there is a difference between the marginal concept as applied to the several factors. Marginal land may yield no rent, marginal capital may yield no profit, but marginal labor must have a subsistence wage. But this distinction is invalid. If marginal land is to remain in cultivation, what is taken out of it in fertility must be replaced by rest, recuperation and fertilizers: concrete capital, if it is to be kept in use, must have its wear-and-tear provision. These costs correspond strictly to the subsistence wage of labor.

There is nothing mysterious in this use of margins of occupation, or employment, to designate the portion of the supply of any factor of production which, by reason of its quality, position, or some expense of utilization, is just worth using. This grading is a simple deduction from the fact that there can be only one price for the same article in the same market. It furnishes a convenient rule of thumb or observation-post for reckoning the rises and falls of prices, rents, profits, wages, in particular industries.

But when economists began to apply the concept of a margin intensively, as well as extensively, they began to get into difficulties. James Mill first popularized the conception of a farmer applying to a given piece of land "dose" after "dose" of capital and labor (either or both) until he reached a "dose" which added so little to the previous net product that it was only just worth while, i. e. the additional product, thus got, only just paid for the unit of capital and labor, leaving nothing over to remunerate the landowner. Now since no part of the produce of this marginal or most intensive cultivation can be

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regarded as rent, while the expense of raising this marginal product measures the price of the whole supply, it seems to follow that rent does not enter into, or form part of, the supply price. Dr. Marshall, showing that this argument is applicable, not to agricultural produce only, required us to hold that "ground rent does not enter into the expense of manufacture."[1]

The fallaciousness of this conclusion from the intensive use of the margin appears at once, if we apply to *a fixed quantity* of capital or labor the same dosing method. Take a given factory, or store, and apply to it successive doses of labor in the shape of operatives or shop clerks, you will come in time to a marginal employee whose productive work adds to the previous total product no more than just suffices to pay his wages (or strictly speaking a "minimum" more). The goods which this marginal worker must be conceived as making, pay wages only, with only a nominal provision for profit to the employer. Since the conditions of this marginal unit of supply must be regarded as regulating the conditions of price for the whole supply, it would appear that profit cannot enter into the price of the manufactured product, or the retail goods. The same result will evidently issue, if we take a farmer, or a business manager, representing a definite amount of organizing and executive capacity, and apply to him increasing quantities of capital and labor, so that his energy is spread over a larger and larger area of productive activity. There will be a limit to the size and complexity of the operations he can best undertake. So there will be a marginal product which only just remunerates the last dose of the capital and labor and leaves him no appreciably larger reward for his ability than he would have got by refusing the last extension of his business. His wages of management appear by this reasoning to play no part in the price of the product of his business, for the marginal product can pay no more than the "cost" of the marginal capital and labor involved.

The palpable absurdity of this line of reasoning is due to a

[1] *Principles*, second edition, p. 462.

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false application of the Law of Diminishing Returns, and arises from an improper treatment of one factor of production as fixed, while another is variable. But though some recent adherents of Marginalism admit this application to be illicit, they still cling to one of its implications, viz. the attribution of a separate productivity and a separate value to the marginal increment of a simple or a composite factor of production. Some of them also persist in attributing, if not a causally determinant, at any rate a regulative part to the marginal increment in the theory of prices.[1]

The whole trouble is due to a misunderstanding of, and an exaggerated appreciation of, the Law of Diminishing Returns. The Law of Diminishing Returns is not peculiar to agriculture, and does not depend upon the "niggardliness of nature." It applies to every sort of business and industry. It simply means that in any line of industry there are efficient types of business which cannot be increased in size without damage. As regards the structure of whole industries, it implies that there is a tendency to throw all the business contributing to a market, e. g. the market in steel rails or cotton cloth or shoes, into forms best adapted to financial success. At any given time, having regard to selling prices, there will only be room for a particular number of such businesses (or plants) and they will all tend to be on a level of productivity and profit. If any more of these representative businesses pressed in (unless invited by some increase of demand in relation to available supply, raising prices) there would an oversupply at previous profitable prices and a diminishing return of profit to the trade.

[1] "There is a commercial principle which causes the last or marginal part of the supply to be strategic in its action on the value of the whole group. The value of the whole crop . . . *conforms* to that of the marginal bushel. If there are marginal laborers, in the sense in which there are marginal quantities of wheat, cotton, iron, etc., then the final or marginal men are likewise in a strategic position; *for their products set the standards* of everyone's wages. . . . The last increment in the supply of any commodity *fixes* the general price of it."—Clark, *Distribution of Wealth* (1899), p. 90. "The specific productivity of labor fixes wages—that is the thesis to be supported in this volume" (*ibid.*, p. 47). "There is before us the picture of social labor cooperating with social capital. Both are governed by the law of diminishing returns and their earnings are *fixed* by the productivity of their final units" (*ibid.*, p. 373). *Cf.* Davenport, p. 470.

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The Law of Diminishing Returns simply means that in every business there is a type or types of maximum efficiency and productivity and profit, and that in any industry or market there is at any given time a limit to the number of such contributing businesses. So far as this law has meaning and validity it is equally applicable to all departments of industry. It is, indeed, an obvious deduction from the very concept "Economy."

Every department of production alike is subject to this economy. The so-called Law of Increasing Returns, supposed to be applicable to most departments other than agriculture, is based on a misapprehension of the economies of large-scale production. The power of a growing business to reduce its costs of production is only operative up to a certain limit. That limit reached, any further extension would bring an increased cost from diminishing efficiency of management. There may be businesses whose total available market is not yet large enough to evoke their full economy of large-scale production, and which, in consequence, appear to be conformable to a law of increasing returns. Some modern trusts or combines may achieve such continuous economies in production that, even after establishing a virtual monopoly, they have not fully exhausted the net economy of large-scale production, and still continue to be able to produce more cheaply as their monopolized market expands. But this only means that the limit which would launch such a big business on to an economy of diminishing returns has not yet been reached. It does not mean that there exist either businesses or industries free from this limit.

This explanation of the so-called Law of Diminishing Returns should suffice to gain admission for my central thesis, that the existence in every branch of production of a type or types of business with maximum efficiency negatives the conception of marginal factors of production less productive than non-marginal factors determining, or even regulating, by their separate productivity, the supply-price for a market. Supply prices are directly regulated by, and measure, the normal average cost of production for a unit of supply in a repre-

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sentative business. Reduced supply prices are due to some improved technique or organization, or access to cheaper materials or labor, for such representative businesses operating in free competition through enlargement of supply.

How have economists come to regard this separatist treatment of the marginal factor and product as intellectually satisfactory? They appear to visualize an entrepreneur, who plans a business, balancing the advantages of putting in labor-saving machines, or employing more hand-workers, and hesitating whether to employ so many male workers in a department or so many more female workers. They see an employer deciding after some experience that it is worth while increasing his staff in some department by so many men or reducing the staff in another, though the size of his market remains the same. But this only means that an entrepreneur has not firm knowledge of all relevant facts and so feels liable to error, or that he actually commits errors and corrects them. But neither Marginalism or any other principle can rest upon the assumption either that an entrepreneur doesn't know the proper plan of the business he is laying out, in his own mind, or that his correction of a miscalculation he has made by adding another machine or another worker can play any determinant part in the regulation of output or supply price.

Given an entrepreneur with complete understanding of his problem, he will apportion his available resources in the purchase of so many plots of land, so many workshops or office buildings, so much equipment of various sorts, so much money for purchase of materials and for wages and salaries. All these quantities will be definite and involve an accurate apportionment of his total capital resources to different purposes. Taking all together, he may consider that a capital of £150,000 is just what he requires. But this way of looking at it gives no significance or serviceable determination to the last £1000, or to the last, or any other, unit of productive power in the different departments.

The recent extension of Marginalism treats "doses" as infinitesimal quantities, applying them to the demand as well as to the supply side of the economic equation represented in a

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market or a normal price, and to all economic activities and salable articles. Economic life is thus reduced on its objective side to a number of infinitesimal activities and transfers of matter, on its subjective side to a number of infinitesimal acts of choice, both registered in the monetary medium.

Money being a single absolute standard of values and infinitely divisible and fluid, the concrete economic objects that it handles, measures and moves have a similar character imputed to them. This is the great bluff which the mathematical economists have put up. They have transferred to the organized industrial system the qualities of identical nature, infinite divisibility and absolute fluidity, that belong to money. In other words, they have taken the abstract or bookkeeping aspect of economics and applied it to concrete economics. Now concrete economics deals on its objective side with objects and physical activities, on its subjective side with feelings and valuations, that are different in quality or kind. To neither side is it rightly applicable. For these objective and subjective factors are finitely, not infinitely, divisible, and of slow and difficult mobility. In a word, the treatment of economics by the calculus of the infinitesimal is a wholly unjustifiable abstraction from the material of the study. Science, of course, must always proceed by abstraction, i. e. by ignoring not merely individual characters but such general characters also as are not relevant to the nature of its generalizations. So mathematics applied to astronomy may ignore the chemical composition and all the characters of heavenly bodies other than the movements with which it is concerned. Mathematics applied to economic phenomena may similarly abstract from the special characters of particular industries or standards of consumption in stating laws of supply and demand. But it cannot properly abstract from, or ignore, characters which belong to that very economic nature which is professedly the object of study. Yet this is what it does when it treats economic facts and forces as infinitely divisible, absolutely mobile, and capable of being reduced to a single kind by resolving qualitative differences into quantitative. It is not the abnormal or the irrelevant which it thus abstracts from, but the normal and the relevant.

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Ruskin was right in charging the economists of his day in their treatment of the economic man with a folly analogous to that of a physiologist who should treat the human body as if it had no skeleton. Our modern Marginalists commit a similar mistake in affecting to treat economic material in general as being quite other than it actually is.

Let us take first the infinite divisibility of economic quantities, whether goods or factors of production, involved in the application of marginal increments to industrial movements. Continuous supply curves are based on the accumulation of such infinitesimal increments, effected by minute rises or falls of price operating on the agents of production. Now no concrete goods are infinitesimal in size. Even water is for purposes of supply composed of sizable drops. The earlier "doses" employed by economists were of appreciable size. Even the "marginal" shepherd of Marshall's theory, just worth his keep in the extra sheep he saved, was a whole human unit of labor.

Now in dealing with supply-curves representing the units of supply, the true unit is the representative business. Differing in form and size in each industry, there always exists one or more types of up-to-date, properly planned and equipped plants, whether they be factories, workshops, stores, mines, or farms, which because of their efficiency, tend to survive and to occupy the whole industry and market for the goods they produce. If increased demand for any of these classes of goods by raising prices stimulates increased supply, that increase proceeds, not by insensible and infinitesimal increments, but by whole representative plants. If an addition to supply is made in the cotton industry, it takes shape in a new up-to-date mill. That is the minimum unit. If more steel rails are wanted, a whole expensive plant must be installed. In any highly organized industry this happens. The limit of supply, or "dose", if the term be preferred, is a whole new business involving a considerable amount of capital and labor. An infinitesimal, or very minute, rise of supply prices will have no effect in bringing about this enlargement of supply. The rise of supply price must attain a certain size and security before it can bring in a

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new representative plant. Merely momentary or casual movements of prices may, of course, be met by speeding-up, or overtime, or other fuller use of existing factors of production. But even these increments in an organized industry are not "infinitesimals" but of considerable sizes. All increments or decrements of hours, or wages, or other conditions affecting costs of production, output, supply prices, are of sensible size. When the Millers' Association decides that too much flour is being produced in this country, it decides to close down so many mills, recognizing the mill as the unit of supply.

The representative mill is the unit of production, its full output is the unit of supply, its cost of production the regulator of supply price. The whole trade tends to be concentrated in mills of this type, though at any moment there may survive a few obsolescent or ill-managed mills carrying on a precarious existence and doomed to early extinction, just as there may be one or two super-mills with some special advantage of a secret process or some other pull.

The actual material of economics on its supply or productive side is thus seen to consist not of infinitesimal but of definitely sized quantities, organized units of production. But the same is true of the demand, or consumptive, side. At first sight this is not obvious. Consumption consists, it may be urged, of innumerable little single acts of purchase for use by individuals. Infinitesimal or minute changes in market price might seem to exert similar minute changes in quantity purchased by consumers. Though elasticity of demand will be different in different markets, curves can, it is urged, legitimately be drawn expressing by infinitesimal changes the effect of price-changes upon volume of demand.

But, just as on the supply side this theory ignores (or abstracts from) the organic structure of a business, the unit of production, so, on the demand side, it ignores (or abstracts from) the standard of consumption. For, just as it is the composite structure of the representative plant that determines how many machines or workers in the different processes shall be employed, so it is the standard of living in a representative family, or group, that determines how many units of this or

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that article of consumption shall be demanded. Though there will be wider variations in families and their standards than in businesses, the procedure of ignoring the complex nature of these standards of consumption is equally invalid. Infinitesimal rises and falls of market price are not reflected in demand and consumption until they have accumulated into sensible magnitudes. Otherwise expressed, changes in demand take place by increments of considerable size, according as some effect is produced by a price change upon the standard of a class.

A class standard of living is an organic complex, involving the purchase for consumption of a large variety of articles of kinds and quantities determined in part by real or supposed physiological needs or satisfactions, in part by habit, or tradition, or fashion. Everywhere some slight element of individual taste or need will be superimposed upon, or will vary, the standard. But the proportion of expenditure expressing the class-standard in most family incomes is very large.

But even the variations from a class-standard consist of sensible increments, not affected by insensible price changes. Most changes in personal consumption are not continuous and minute but sudden and considerable. When taxation on tobacco and liquors causes individual consumers to give up cigars and take to pipes, to substitute beer for whiskey, or to drop the consumption of one or both, these are changes of considerable magnitude, affecting, by imitation or common consent, whole groups of consumers and causing a large mutation of demand.

I use the term "mutation" deliberately because of its connection with the theory of development in organisms. For one of the main charges against the application of the infinitesimal calculus to economics is that it treats organic material as if it were inorganic. Or, if the term "organic" be questioned, in its applicability to a business or a standard of living, the term organized, expressing the active will of organic beings, supports the same charge. Changes in organization are not accomplished by insensible but by sensible increments.

Moreover, alike in business and standards of living, the

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changes that take place are determined, not at the margins of production or consumption, but at the centers, and affect the whole composition of the bodies. When a business changes by taking in some new machine or process, this mutation is sudden, and reacts in countless ways upon the various other material and human agents. Similarly with a standard of consumption, when any new article of consumption enters or is removed, the change involves a new composition of the standard. Prohibition in America, so far as effectual, has changed the whole distribution of the family income, involving, not merely an expanded use of sugar, but an increased demand for Ford cars, with innumerable other economic and vital alterations.

It is the neglect of the organic nature of business and standards of living that leads some economists to think that not only definite size can be abstracted from, but qualitative differences. Money, as the measure of all economic things, can substitute quantitative for qualitative value. Different kinds of costs and utilities can be brought to a common measure at their margins!

The treatment runs as follows. Whenever you buy anything, you may either set your mind on the utility or satisfaction attaching to the thing you buy, or on the cost of doing without the other thing you would have bought if you hadn't bought this instead. Since what everyone is really after is some sort of satisfaction, it is best provisionally to take the view that every purchase expresses a preference for a particular kind of utility over other kinds. This is evidently true both of a producer buying factors of production in his business or of a consumer buying consumable goods for his family's livelihood.

Now if a business man's accounts show that in any given year or week, he spends a number of different sums of money upon the purchase of raw materials for his works, coal, rent for his premises, wages for manual and clerical labor, it must be admitted that the last pound he pays for any one of these things purchases the same amount of productive service or utility as the last pound spent on any other. If he is found spending £60 a week on manual wages, £8 on clerical wages, the sixtieth pound in the former must be considered to buy the same amount of utility as the eighth pound in the latter. This

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follows from the warranted assumption that our business man is an economist and knows what he is doing. The fact that he has apportioned his expenditure in this way seems to carry an implication that he has carefully and separately balanced the services of the office boy he has included in his clerical expenses with the services of another young machine tender he might otherwise have got for the same money, or with the extra ton of coal he might have laid in, in anticipation of an early rise of coal prices.

Now these several productive utilities, though quite different in kind, are supposed to be referred to some common standard of utility in the mind of our business man. The earlier units in each set of expenditures are taken for granted as belonging to the accepted routine. But the final units are matters of delicate balance and selection between different advantages. It may not be easy to envisage psychologically how the relative advantages of smoother office work, increased output, and provision against a future coal-shortage can be brought to a common denominator in the mind of our business man. But the action taken seems to imply that this miracle has been performed, differences in kind being reduced to differences in quantity of some common good.

Still more interesting is the application of this principle to the consumer. The housewife who spends three-and-sixpence in buying seven pounds of sugar, instead of spending three shillings for six pounds and putting the odd sixpence into a fund she is accumulating to buy a pair of boots, has compared two marginal uses of this sixpence and decided in favor of the seventh pound of sugar. The whole of her expenditure of the family income involves, it is urged, a number of these delicate marginal choices of alternatives which appear to differ in the kinds of utilities they procure. Or, if these utilities seem not widely different in kind, take the case, cited by Mr. Wicksteed, where a man decides to spend a loose pound, in six shillings on a dinner, four shillings on a concert ticket, ten shillings on a contribution to a missionary society, when he might have distributed the sum on these same objects in some different proportion. Has he not succeeded in performing the feat of

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comparing the various sorts of satisfaction which good feeding, music and moral satisfaction would procure by reducing these diverse goods to some common subjective standard? Has he not decided that the tenth shilling given to missionary enterprise just yields more satisfaction than another course at dinner, or a slightly better place in the theatre?

Now it would be foolish to deny that there are circumstances under which these delicate adjustments at margins of expenditure, apparently involving comparisons of different sorts of units of satisfaction or utility, take place. What are these circumstances? They arise when some alteration in a standard of production, or of life, is required.

Taking the case of a representative business, I have shown that, since the quantity of each factor of production is predetermined by the unity of the business plan, no significance can be attached to the final units of each factor. The mind of the entrepreneur does not concern itself with comparing the final units of expenditure upon each factor to see that they yield the same productive utility.

Now the same holds of a consumer, laying out a regular family income on an accepted standard of living. The housewife, with her £4 to spend upon the maintenance of her family, proceeds on the lines of an accepted budget, which expresses, not a number of separately measured items, but a certain unity or harmony of needs or requirements. Each of the items has a definite quantity or limit, but that quantity is determined by the general plan of family well-being conceived by the housewife with sufficient clearness of consciousness to guide her actions.

She lays out the regular family income on the same principle as the entrepreneur lays out his capital in running a representative business, so much on this item, so much on that, the "so much" in each case derived from the requirements of the composite standard.

Now if standards of business and of living were absolutely static, in respect to goods, services and prices, this explanation would suffice. But, of course, they are not. Neither for the business man nor for the housewife is this week an exact

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replica of last. Some change, however small, in the income available for expenditure may take place, some changes in the prices of goods and services are always happening, and some changes in the nature of the family needs. Now when such changes are reasonably predictable, they can be provided for in the plan or standard of a business, or a family maintenance, and can thus be incorporated in the standard. A reserve or insurance fund will often provide for such changes. But when they are not, when some unforeseen business incident, or change in income, requires some deviation from the accepted standard of expenditure, the procedure inevitably concentrates upon marginal alterations. The standard remaining substantially the same, no attention need be paid to most of the units in its several factors. But when the required reform involves a number of small but disproportionate reductions in the size of several factors, in order perhaps to incorporate some new factor, the paring process must be closely watched and the shifting carefully measured.

If our business man is called upon to add some new process, involving an economy of current expenses, or of factory space, the detailed adjustments he makes will involve taking just so much from this and from that in order to find just so much of the new accommodation. If he is not quite certain of his ground, he may proceed by trial and error, making a series of little adjustments "at the margin" until he settles down to the new economy. But, all the same, this new economy, the exact "how much" for each item of expenditure, is regulated by the organic character of the business as a whole, not by the changes at the margin. These changes are consequential in their nature and size upon the new economy of the business as a whole.

Just the same with the housewife who is called upon to economize in other items of her budget in order to make special provision for a sick member of the family. This sudden obligation to extemporize a new standard of living compels her to examine closely the parts played by her former purchases in the old standard, so as to see how much she can transfer from each of the old factors to make provision for the new. Now, that she must pare off just so much from this, just so much more or

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less from other factors, perhaps leaving some untouched, is obvious. But how far must we visualize her making marginal comparisons of different kinds of utility or satisfaction, in order to get the new standard? Her new standard will involve buying a pound less butter, suspending the weekly shilling towards new boots, knocking off a joint of meat, and reducing by ninepence the family expenditure on "the pictures". She has thought out, or more properly she has felt, what the new standard involves and this is what it comes to. But in what sense has she made the set of separate comparisons of marginal utilities which this scientific analysis of her conduct implies?

Is there any way in which she can be conceived as balancing the utility of another half pound of butter against ninepence of "the pictures" and just deciding against the latter? I think it is a psychological error to represent her as doing this. The error consists in reading a psychological act which does not take place into an objective act that does. Undoubtedly she thinks, "How much does the new emergency require me to knock off this item, and how much off that, in order to provide for an estimated new expense?" But she doesn't perform the impossible task of comparing marginal values of two different kinds of satisfactions. The emergency has put into her mind a new standard of living with changed valuations for the old items, regarded *en bloc*. These changes of valuations *carry with them* reductions of purchases of different sizes and properties. The mathematical treatment, imputing a number of separate acts of measurement and a reduction of different kinds of feeling to some common term, misrepresents the nature of a personal act of judgment, and a personal economy.

A person adjusting the use of his resources to the demands of a new situation makes a number of delicate adjustments at the margins. But the determinate judgments, of which these delicate adjustments are expressions, are made, not at the margins, but at the center. They are the quantitative implications of the new organic plan he has applied. If we regard him as a creative artist working out a new ideal with the materials at his disposal, we shall get nearer to the true psychological interpretation. A painter in mixing colors to get some particular effect

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must exercise care to obtain the exactly right proportions. This care will be greatest when in mixing he comes near the limit, and is in danger of putting too much or too little of the several colors into his mixture. A marginal economist, observing him, might pronounce the judgment that he kept adding increments of the different colors until he stopped, and that therefore an exactly equal art value must be attached to the last increment of each color. For if the last brushful of Turkey-red had been found to have less value than the last brushful of green, another would be added, so as to even out the values of the different colors at the margin.

Now this, of course, simply means that in every sort of composite plan, economy or harmony, involving the use of different materials, some exact amount of each material is required. In forming such a plan no special thought is directed to the marginal unit of each factor. But in carrying out a change of an existing plan, the process of shifting pieces from the old plan to the new involves a series of operations at the margins. The size of these operations is, however, determined and laid down in the conception of the scheme as a unity. The painter, not knowing exactly how much of each color is required to produce his effect, may try a little too much of this or too little of that, rub out, and begin again until he has it just right.

But the idea of imputing any special value to the marginal units, or of regarding the artist as comparing the colors at each margin by some common standard of art value, is alien from the psychology of art. As soon as it is clearly comprehended that the business man, the consumer, and every man pursuing a line of policy or conduct, is acting as an artist, the invalidity of Marginalism will be equally apparent in their cases.

In any line of conduct where quantities of different factors are involved, the plan of conduct involves in its execution exact manipulation of these quantities. But there is no meaning in assigning to the final units of the different factors the same value, or indeed any separate value. Such separatism or atomism is the repudiation of creative action and the organic unity which it expresses.

Summarizing, we may say that when a statical condition of a

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business or an industry, a family or a class standard of living, is the subject of inquiry, the separate cost or utility of the marginal unit, were it ascertainable, would have no significance. The exact quantity (and therefore the margin) in each case is determined, in the causal sense, by the organic make-up of the business, industry, or standard of living, as a whole.

Where a new standard is in course of formation, the operation involves a number of quantitative changes in the factors of the old standard which occasion a rise or fall of the margins. There may be a practical utility in watching and measuring these marginal changes which register the differences between the old standard and the new. The acts of composition and substitution, of which economic conduct so largely consists, demand many of these marginal adjustments.

So far we have been dealing with objective standards of production and consumption, and their monetary indices. But any treatment of economics, as an art, or science, of human welfare, involves the translation of the fund of objective wealth, its factors of production and of consumption, into terms of human or subjective utility and cost.

The product of a business, or an industry, will, it appears, vary in the amount of economic welfare it contains, according as the total cost or disutility of producing and the utility of consuming it are high or low. The amounts on both sides of the equation will evidently vary with the distribution of the productive cost and the consumptive utility. The maximum wealth, or welfare, attaching to a stock of goods, will involve such a distribution of the productive energy as will yield the minimum of painful or injurious effort on the one hand, and such a distribution of the consumptive utility as will yield the maximum of pleasurable or serviceable consumption. The true principle of "economy" is thus expressed in the maxim "From each according to his powers, to each according to his needs," for this would assign the lowest aggregate cost and the highest aggregate utility to any product. The art of political economy should evidently be directed to the contrivance of methods for the fullest possible application of this principle. But when we come to subjective costs and utilities, satisfactions

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and dissatisfactions, how far is it possible to aggregate them by additions, or by setting off one against another? And in such a process, so far as it is possible, what part is played by margins or surpluses?

In this problem of envisaging a body of objective wealth in terms of subjective wealth, or welfare, it is impossible to give a separate treatment to the cost of production and utility of consumption. For the amount of "satisfaction" which such a body of wealth represents must take both into simultaneous consideration. Both the individual and the group, or society, must be treated from a producer-consumer standpoint. You cannot, even theoretically, consider the amount of disutility, or painful cost, which goes into producing a body of goods, separately from the consideration of the amount of utility, or satisfaction, it yields in its consumption. For these two considerations evidently interact. Conditions of production, in respect of hours of labor, nature of work, etc., must react upon conditions of consumption, i. e. capacity for utilizing or enjoying objective wealth. Conversely, conditions of consumption, e. g. amount of leisure, skill in utilization of commodities, will, by reacting on efficiency, make a given working day easier or more difficult. This will be true even as regards the translation of a given concrete body of goods into human welfare. It will, however, be much more important if the concrete body of goods is not given, but depends for its composition upon the needs and desires of the producer-consumer group.

Here we come to the proper setting of the problem of economic welfare. How to utilize the human and material resources of the group for the best satisfaction of their wants? That satisfaction must have equal regard to the most serviceable and least injurious employment of human activities in production and in consumption. It must not take activities of production as mere means to consumption, even if there be a general presumption in favor of diminishing the total activities of production and increasing those of consumption.

Welfare may be taken to reside as much in the instinctive and trained activities of a man for constructive work as in the application of the product or concrete result of these activities

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to some human use or consumption after its production is ended. In the realm of economic goods the kind of production termed "art" is the chief example of the close relation between the producing and consuming sides. It also serves to disabuse our minds of the assumption that a stock of goods must represent some net cost, or disutility, in its production. This is evidently untrue of work which is upon the whole, interesting, pleasurable, and not too exacting in the terms of its production. The central problem of economics may thus be conceived as "How to get as much work as possible to yield a net balance of utility or satisfaction in its performance, consistently with an equal regard to the utility or satisfaction obtainable from the products after they are produced." The trouble is that a large proportion of the work required to satisfy primary physical needs appears to be such as must involve some net cost of disutility or disagreeability to the producers, only to be made up to them in their consumer capacity.

We are, however, concerned here not with proposals for the establishment of an ideal economic society, but with the narrower question how far a mathematical calculus is applicable to the problem. And here, I think, psychology must have a decisive word to say.

We have already seen that an individual possesses, in some general unified conception of his personal good, a power of valuing the rival claims of different sorts of satisfaction or dissatisfaction. Crusoe's economy would clearly be directed by some such general conception of his producer-consumer personality. His distribution of his time and energy among various activities of production would follow the lines of his thought, or feeling, in relation to the interest, arduousness, disagreeability, or risk, of the different sorts of work, with due and simultaneous regard to the importance or satisfaction of the uses of the product of each sort of work. He would give just so much time and effort to producing just so much utility of consumption of different sorts. It is thus possible to conceive the last minute Crusoe gives to cutting down a tree as having the same cost as the last minute given to roofing a shed, or digging a bit of land. But this marginal equivalence has no

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real significance. It simply follows from Crusoe's total conception of his plan of life, including the utility of consuming the product of his last unit of labor together with the irksomeness of producing it. Nor would this quantitative analysis yield a separate producer's surplus for one particular kind of work, or even for his work-day as a whole. It is true that if he decided to dig his field for just two hours, by breaking up this time into a series of five-minute units we can discover a curving surplus of producer's gain, growing in size towards the first unit.[1] But since, in the subjective valuation of his digging he included the utility of the various units of consumption with the disutility of the various units of production, his margin of digging and the producer's surplus would be affected by the marginal consumption of the food produced and the consumer's surplus. In other words, he is after the largest producer-consumer's surplus, and the margins on each side of the equation are determined by this whole plan of work and living.

Now this economy of his is dependent on and derives from his organic unity or harmony. Can we impute a similar economy to a society or group of producer-consumers? Were it possible for a completely socialist society to operate successfully, such an economy might seem attainable. It would, however, involve an abandonment of the strictly subjective or personal valuation in a Crusoe economy and the substitution of a social valuation which would be more abstract in the sense of disregarding the closely individual feelings that enter into work and enjoyment. Having to decide how much productive energy of different sorts, and operating under various conditions, should be put into producing variously sized stocks of goods for the immediate and postponed satisfaction of many different wants, it would have begun with substantially the same problem as Crusoe. But not having the same closely unified personality to test the various claims and choices, it could not solve it as effectively. It could not add together the subjective values of its different members, for such a psychological performance is

[1] Not, however, an even curve, as industrial psychologists now show, for the first five minutes are more disagreeable than the second.

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impossible. There is, strictly speaking, no standard for comparing A's pain or pleasure, in his first hour of work, or his day's work, with that of B, and the same applies to their respective satisfactions in consuming any given good.

All that the socialist society could do would be to erect standard economic men and women, by arranging the indications of the subjective valuations as objectively expressed in measured curves of supply and demand. It would have to ignore all deviations from these standards, or at least, to make certain allowances which would, in their turn, be standardized averages. This criticism is no reflection upon socialist experiments, which are based upon assumptions about common needs and common human nature.

But such a socialist society would have to ignore certain important qualitative facts which should rightly play an important part in determining any aggregate of economic welfare. For instance, the obligation it would impose on all alike to perform a certain minimum of routine service for society would involve very little, if any, subjective cost on persons who enjoy, or do not mind, such work, while it would involve a heavy, sometimes almost intolerable, cost on others. Equality of sacrifice, in other words, involving impossible subjective estimates, could not be even approximately secured. Nor could a socialist society, apportioning the product according to some objective standards of need, allow for the wide differences in capacity of enjoyment or utilization in persons possessing different tastes or trainings.

Nor could these defects in the subjective producer-consumer economy be remedied adequately by the statistics of a price-system. For though it might be held desirable for a socialist state to regulate the rates of production and consumption of different goods by adjustments of wages for labor and of commodity prices, this would by no means secure the ideal distribution favorable to the maximization of welfare. For the inequalities of income it would involve would have no determinate relations to consumers' needs or utilities. Or conversely, changes in consumption, thus occasioned, which involved some large increase of heavy routine labor in production, might in-

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volve a net loss of producer-consumer welfare, the total real income representing a rise in subjective costs that exceeded the rise in subjective utility or satisfaction from the alteration in the standard of consumption.

In other words, a socialist state, not having the organic sense or consciousness of a Crusoe, cannot be capable of making those delicate references to a standard of personal values which are possible for the individual producer-consumer.

Can a competitive society of producer-consumers fare better? By delicate discrimination and choice, free owners of labor and capital may apply their factor to such productive activities as will yield them the largest net advantage. The owner of labor will weigh producer costs against consumer utilities; the owner of capital will weigh present consumers' goods against future. Such is the hypothetical procedure. But is there anything in it to guarantee, even approximately, a maximization of economic welfare as expressed indifferently in productive and consumptive costs and utilities? Professor Pigou, as we have seen, confining his analysis of economic welfare to the consumer side, does not furnish any answer to this question. His elaborate application of Marginalism gives a general endorsement of the view that under free competition the product will be maximized, and that the natural distribution of it cannot, even in the interests of the poorer classes, be advantageously interfered with. "Artificial" interference with distribution may, indeed, be effective in increasing the "welfare" attached to the product, so far as "monopoly" conditions attach to an industry, or where an increase in the workers shows results in increased working efficiency, and in one or two other exceptional cases. But:

> generally speaking, a transference of resources from the relatively rich to the relatively poor, brought about by interference with the natural course of wages at any point, is unlikely to do otherwise than injure the national dividend, and therewith, in the end, the real income of the relatively poor.[1]

[1] *Wealth and Welfare*, Part III, chapter viii, s. 2.

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The relevant and important fact, that in most normal processes of bargaining, the inequality of power between the relatively rich and the relatively poor (apart from any definite monopoly) gives to the former a share of the product which is excessive, in the sense that it furnishes no necessary incentive to productive activity, is excluded from Dr. Pigou's analysis. This exclusion, which follows inevitably from the application of Marginalism, precludes economic policy from all effective steps to a better distribution of the product. For, though Dr. Pigou admits at the outset of his analysis that there are sound grounds for holding that "other things being equal" an approximate equalization of increase would enlarge the "welfare" attaching to the national dividend,[1] his method of procedure rules out all possibility of accomplishing such equalization, except by steps which, in his opinion, so reduce the dividend that even the poorer classes will be worse off than before. Although this depressing judgment is qualified by an admission that some artificial interference with natural laws of distribution, so as to secure the poor against "extreme want" is justified, that very qualification contains an implicit recognition of the futility of the whole procedure regarded as a mode for correlating economic wealth with economic welfare. For here the collapse of the quantitative analysis appears in the admission that "the good of abolishing extreme want is *not commensurable* with any evils that may follow from the diminution of the dividend."[2] When Dr. Pigou goes somewhat further, as he does, in endorsing the economic feasibility of a higher minimum in a relatively rich country,[3] one feels that he is imperiling the delicate and fragile structure of his calculus, in favor of some humanitarianism that is grit in the mathematical machine.

But, reverting to our main topic, this able application of Marginalism to the correlation of wealth and welfare fails altogether to deal with the subjective problem.

[1] *Wealth and Welfare*, p. 66.

[2] *Ibid.*, p. 395.

[3] *Ibid.*, p. 397.

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It fails in the first place, as I have already noted, because it takes no direct account of the "welfare" represented in the different modes and distributions of the utilities and costs of producing the national dividend. This is an error of primary importance. For, by a separatist treatment of the distribution of the dividend, Dr. Pigou fails to present the problem of economic welfare in its true organic unity as the collective efforts of the human instincts and desires to obtain satisfaction in an economic system. All the changes in the distribution of the dividend, which he discusses, must have reactions, through changes in the nature of consumption and demand, upon the productive activities, and so upon the net human "costs" involved in the dividend. Consideration of the interactions between the distribution and qualities of production of the dividend and the distribution and qualities of its consumption is essential to any fruitful correlation of wealth and welfare.

But, apart from this central flaw, Pigou's application of Marginalism to distribution of the product suffers from the general defects we have already noted. Marginalism by its *modus operandi* negates surplus income by assuming perfect terms of divisibility, mobility, and opportunity, for all new factors of production. Though Pigou and some other Marginalists introduce qualifications afterwards, by admission of monopoly powers or imperfection of mobility, these admissions go no further than allowances for frictions in an otherwise perfectly working mechanism.

For furnishing a calculus of economic welfare, comparable to the process by which a Crusoe regulates his economic life, Marginalism, representing a large number of separate acts of choice made by separate persons, is inherently incapacitated. The predetermined harmony by which these seemingly unrelated acts are wrought into a unity of social well-being, does not exist. It is simply assumed by excluding every element of economic truth that conflicts with it. This is not a legitimate process of abstraction rightly employed by science for its generalizing work. It is an illegitimate attempt to rule out the qualitative differences related to different human personalities, by pretending to resolve them into quantitative differences.

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The admission, frequently made, that there are some parts of consumption, i. e. those of vital necessaries, which are infinite or immeasurable in utility, accompanied, as should be the case, by a similar admission that some "costs" are likewise infinite and immeasurable, should have put economists upon their guard. For just as there is no way of measuring necessaries against unnecessaries (for "all that a man hath will he give for his life"), so there is no legitimate way of measuring in subjective terms of human good, higher kinds of work and higher kinds of satisfaction against lower. The methods by which they *appear* to be measured, i. e. market prices, do not really measure them. What they do is to abstract an average economic man and measure them in him, treating him as a Crusoe for this purpose. Now the process of abstraction or generalization seems to enable them to give a social human value to a national dividend, according to its quantitative distribution.

But the abstraction ultimately rests on an assumption that, when two persons give the same sum of money for the same amount of a commodity, they are getting the same subjective utility, or human gain, out of the bargain. Now this assumption will not bear scrutiny. The equal price does not warrant this identity of gain. A rich man pays sixpence for a loaf of bread. So does a poor man. But by admission there is no commensurability between the utility or welfare conveyed in the one case and in the other. The false assumption is a double one. It assumes first equality of income or purchasing power, secondly, identity of personal needs and valuations. It is the latter false assumption that invalidates all purely quantitative valuations of subjective welfare. You cannot average these differences of kind, or refer them to a social standard analogous to the personal standard Crusoe brings to bear.

But though no social standard exists for the direct measurement and valuation of subjective utilities and costs, it by no means follows that science is helpless in the matter. The problem is familiar to psychologists. No direct measurement of psychical phenomena is possible. But when these are accompanied by physical phenomena, the latter are often susceptible of accurate measurement. So far as economic welfare

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consists in subjective good, it cannot come within the mathematical calculus. But where reliable physical indices of welfare are found, a social standard may be erected out of them, sufficiently reliable for practical purposes.

The correlation between statistics of wages and employment and certain accepted hygienic standards is one among many examples of this method. Low mortality and disease rates are legitimate indices of subjective welfare. Statistics indicating the increased demand for higher education, the diminishing expenditure per head on alcohol, unsanitary housing, and many other measurements of the objective standard of life, are rightly taken by statesmen, social reformers and others, as sound evidence of an advance or decline in social economic welfare. Statistics of the reduction of hours of labor in industries, the advantages of rest intervals, as shown in reduced accidents or better output, may similarly be taken as sound evidence of reduced human costs of production. Not only the science but the art of economics is largely based on assumptions that human welfare is affected favorably by a more equal distribution of material goods, and a more equal call upon productive energy. But though, alike for statesmen and reformers, these are warrantable assumptions, enabling them to erect social standards, it cannot be held that such standards are endowed with the qualities of exactitude that belong to the statistics utilized in their making. Nor is it true that any two statesmen or reformers, translating the measured evidences of improvement into their welfare content, will apply the same standard. For, in the last resort, it will be his own personal appreciation of what is good for others that will form each statesman's subjective standard of reference for the various objective economic gains or losses.

These considerations, however, do not invalidate social standards as much as might appear. So much stress is commonly laid upon human differences as to conceal the size and importance of "common humanity". In asserting the valuation of various ingredients in a standard of living, any two values are likely to be in close agreement as regards nine-tenths of the substance of the standard, as is shown by comparisons of the

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actual expenditure of different members of the same economic class. While, therefore, a social standard of economic welfare will be less exact for a society than for an individual, it will be conceived in the same way. Instead of a Crusoe referring each claim of production and consumption to the organic standard of his personality, the policy of a society, so far as directed by some general regard for public good, will operate by setting up a standard, or several standards which express the agreed elements among the different valuations of those who are effectively responsible for these standards. The adoption of a "common rule" for conditions of labor, and in general for various standards of living, is thus to be regarded, not as the addition of a number of separately measured desirables, but as based on an organic conception of social economic good, involving and imposing certain proportions in the expenditure of time, money, objective energy, and other measurable things.

The use of index figures and other modes of measuring exact movements of wages, employment, prices and volumes of trade, money and other economic objective facts and forces, is the assistance they render by enabling us to see where and how some existing standard of work or living is being weakened or undermined, and where and what steps can best be taken to safeguard it, or to improve it. In progressive economic communities such measurements are serviceable chiefly in helping the application of new and higher standards rendered possible by increasing wealth.

But the belief that economics can become even a moderately exact science rests upon fundamental misconceptions of the limits of science in dealing with economic conduct. The chief misconception, as above indicated, lies in the claim that somehow qualitative differences can be converted into quantitative. This has always been the crux of mathematical hedonism in all its applications. The utilitarian calculus is inapplicable to differences of kind. The mathematical hedonist economics, as Veblen shows, is unable to deal with development of the economic system as distinguished by mere growth. "Like other taxonomic sciences, hedonistic economics does not, and cannot, deal with phenomena of growth, except so far as growth

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is taken in the quantitative sense of a variation in magnitude, bulk, mass, number, frequency."[1] An improvement in the quality of work or of consumption, in its reactions upon worker or consumer, cannot be quantitatively assessed. You cannot say "how much" better is the "higher standard" of work, or consumption, than the "lower" whose place it has taken, any more than you can say that a noble character is fifty per cent better than an ignoble, or a great work of art worth twice as much as an inferior work. Money, the measure of all things economic, is inapplicable to measure qualities, even as reflected in current desirability. All art is a denial of the validity of this quantitative valuation. For though it involves exact quantitative measurements, these are always subordinated to considerations of organic unity or harmony of parts, qualitative considerations.

One point remains to complete our statement of the limits of a quantitative calculus in economics. In the main we have followed the usual course of science in dealing with things as they are, not as we conceive they ought to be, or might be. We have shown that, taking current standards of valuation for economic welfare, the methods of mathematical calculus can yield no results corresponding to their formal exactitude. For their assumptions of infinite divisibility and absolute fluidity of the material involved, are not legitimate assumptions, while the method by which differences of kind appear resolvable into differences of degree involves a *petitio principii*.

So far, however, current desirability, as reflected in the appraisals of all who take part in the economic operations, has figured as the underlying, though intrinsically immeasurable standard. But we cannot in the art of Economics exclude the other sense of the desirable, viz., what ought to be desired. This exclusion could only be possible if the attitude of the organized society, as state, merely kept a ring, and let the competing or combining interests in the economic sphere fight it out among themselves, each actuated by his own sense of the desirable. But the increasing part played by every modern

[1] *The Place of Science in Modern Civilization*, p. 192.

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state in the control or regulation of economic matters, makes it no longer possible to identify the desirable with that which is currently desired. The state imposes standards of desirability based avowedly on hygienic, moral and economic politics, not representing the currently accepted conscious desires of those concerned, but some ideal of health, education, or other element of social welfare incorporated in a standard of life higher than, or different from, that expressed by any average or representative valuations along current lines of desire.

Though seldom departing very far from the current standard of values, it gives a "lead" in certain directions, guided by some half-conscious ideal. If, therefore, we are to take all relevant considerations into our view, we must envisage economic welfare as a mixed or compromise concept, in which average current desires are qualified by social ideals.

From the standpoint of a science aiming at exactitude, this seems very unsatisfactory. But we find the same compromise between current satisfactions and more distant aspirations in every sort of conduct. Everywhere it limits the ability of man to make clear, precise and certain plans for his immediate and future conduct.

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THE PRESIDENTIAL ELECTION OF 1824–1825

THE chief interest in the presidential campaign of 1820 was not in the re-election of James Monroe, for that was conceded on all sides, but in the choice of his successor. The Federalist party as a national organization had practically disappeared and no new political issues of sufficient importance to cause the rise of a new party had as yet made themselves felt. The basis of selection of candidates was therefore personal rather than political. Although many names were suggested, the number gradually diminished until for practical purposes it was confined to William H. Crawford, Secretary of the Treasury; John Quincy Adams, Secretary of State; Henry Clay, Speaker of the House of Representatives; John C. Calhoun, Secretary of War; and General Andrew Jackson. Every political act involving these men was weighed carefully to determine its bearing on the election of 1824. A congressional caucus held on April 8, 1820, with the object of nominating Henry Clay as Vice-President, did nothing. While it was agreed that Clay would make a good presiding officer in the Senate, it was feared that his election would enable him to become President in 1824. The fact that he was a western man, popular, on the spot to make friends, free from the danger of incurring enmities through the support of partisan measures, would work in his favor. As a consequence, only forty-six members out of two hundred and thirty attended the caucus. On motion of Colonel Richard M. Johnson of Kentucky it was resolved that it was inexpedient to make any nomination.[1]

[1] William Plumer, Jr., to William Plumer, April 10, 1820. The Plumer manuscripts cited throughout this article are in the State Library at Concord, New Hampshire. The letters here used were written while the younger Plumer was a member of the House of Representatives, 1819–1825.

On the proposed caucus mentioned by Plumer, see Adams, J. Q., *Memoirs*, vol. V, pp. 57–59. Even before 1820 there was much discussion of possible successors to Monroe—*ibid.*, vol. IV, pp. 63, 197–198, 228–231, 240–243, 297, 306–307, 359–361, 452, 497, 513.

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Looking forward to the election of 1824, some of the New England electors in 1820 considered the advisability of voting for John Quincy Adams for Vice-President, not with the idea of preventing the re-election of Daniel D. Tompkins of New York, but to express their confidence in Adams and to prepare the public for his election to the presidency four years hence. William Plumer, one of the New Hampshire electors, wrote to his son, a member of Congress, requesting him to ascertain in confidence from Adams whether he had any objection to this plan.[1] Upon receipt of the letter, the younger Plumer went to Adams, who expressed the desire that not a single vote be cast for him for Vice-President. So far as the election of 1824 was concerned, Adams feared that the proposed vote might injure, rather than assist him. He stated that he stood well with Tompkins and did not wish to withdraw a single vote from him, especially as such action might possibly prevent an election. Although Adams did not say so, Plumer inferred that he wished to keep New York on his side with Tompkins's aid, as against DeWitt Clinton, who was looked upon as a possible northern rival of Adams for the presidency. There was no doubt in Plumer's mind that Adams was influenced by the supposition of his being a candidate in 1824. In fact, Adams discussed the political possibilities quite frankly with Plumer, giving it as his opinion that the question of slavery in the new states would be the vital issue in the next election. Accordingly, the North and South would each unite upon some one man, the South probably upon Crawford or Clay, the North upon Clinton, Rufus King, Tompkins or (added Plumer) Adams himself. The chief difficulty would be for the members of either party to agree among themselves, with the probability (and here Adams proved to be a good prophet) that there would be no choice by the electors and the decision would rest with the House of Representatives.

With respect to the various candidates, Adams thought that Clay would unite the western people and if he could not be

[1] William Plumer to William Plumer, Jr., November 15, 1820. See also *Letters of Daniel Webster* (Van Tyne, ed.), p. 85.

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chosen President, nobody from the West could. He doubted whether Clay would be President, if at all, immediately after Monroe. Crawford, Adams regarded as "an intriguer of the first water," who was using his official position and patronage to the fullest extent to satisfy his ambition to become President. His schemes were becoming known, however, and there was much opposition to him in the South, especially from Jackson. Adams said that there was a great struggle in Ohio, Indiana and Illinois to determine whether southern or northern interests should prevail. So far as Clinton was concerned, Adams thought he would obtain many votes if he could hold his position in New York. Clinton also had supporters in Pennsylvania and Ohio, and had secured the friendship of Jackson and his followers. Of the northern candidates, Adams mentioned King and Tompkins but did not discuss his own prospects; however, Plumer said that it was evident that Adams had thought a great deal on the subject and that he regarded Crawford as his most bitter rival.[1]

Adams's request that no electoral votes be cast for him in 1820 had no effect upon the elder Plumer, who voted for Adams for President and Richard Rush for Vice-President.[2] Adams expressed "surprise and mortification" at this vote, declaring that he could take no pleasure in an approbation which was denied to the Administration.[3] Adams, however, was not averse to discussing his political prospects with his friends. In February, 1821, he went over the entire field of presidential candidates with Joseph Hopkinson and declared that he would take no definite steps to advance his own cause.[4] Jealousy of Clay and suspicion of Crawford's political plottings against him found frequent expression in Adams's diary.[5]

The session of Congress in the winter of 1821 found political gossip and machinations going on apace. Crawford in conver-

[1] William Plumer, Jr., to William Plumer, November 24, 1820. *Cf.* Adams, *Memoirs*, vol. V, pp. 205–206.

[2] William Plumer to William Plumer, Jr., December 6, 1820.

[3] Adams, *Memoirs*, vol. V, p. 279.

[4] *Ibid.*, pp. 297–300.

[5] *Ibid*, pp. 325–326, 327.

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sations began to show his ill-will toward Calhoun, and since everything was judged in the light of possible elevation to the presidency, this enmity between the two southern secretaries was regarded as of ill omen for Crawford's success.[1] Adams was not without his difficulties. Although the defeat of John W. Taylor for the speakership was imputed to political dissensions among the New-Yorkers, there was considerable question whether or not Taylor's defeat would affect Adams's candidacy for the presidency, Taylor being a recognized supporter of Adams in New York. Plumer thought that the Bucktails were friendly to Adams, and that the Clintonians, once certain that their favorite had no chance, would prefer Adams to any other man; however, Plumer admitted the danger that lay in party dissension.[2] Further dismay was spread in the Adams camp by the request of certain members of Congress from Pennsylvania and New York of Calhoun that he be considered a candidate for the presidency.[3] Calhoun had up to this time been regarded as favorable to Adams. Plumer sounded Calhoun on the subject and was told that the latter held Adams in high esteem but that in the South it was believed that Adams was unpopular in New England and that without the united support of the North, Adams could hardly expect support from the South. As a result, Crawford was gaining strength in the middle states and would draw votes from the North also unless some more popular man than Adams could be nominated. To offset Crawford's gains, William Lowndes had been nominated by about one-third of the state legislature of South Carolina. Calhoun said that the vote would have been in his favor except for the fact that he was considered as too friendly to Adams to run against him. Plumer got the impression that Calhoun, if a candidate, was rather against Crawford than Adams, and desirous of preventing Crawford's election in case Adams were not likely to succeed. Calhoun dwelt upon his own friendship and sympathies for the North and, after a conversation of more than an hour's duration, Plumer left him "with great doubts as

[1] William Plumer, Jr., to William Plumer, December 11, 1821.

[2] *Ibid.*, December 28, 1821.

[3] Adams, *Memoirs*, vol. V, p. 327.

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to his real views, but impressed finally with the opinion that he would push for the Presidency now, if circumstances favoured; and if not, that he would make a merit of withdrawing for the present with an intention to come forward at some future and more auspicious juncture." [1]

As Calhoun had expressly told Plumer that he had no secrets, Plumer went immediately to the Department of State and repeated his conversation with Calhoun to Adams. Adams said that he had always considered Calhoun as friendly to him but that his late movements had been a puzzle until explained by Plumer. Adams declared that he would retire at once to private life rather than make any bargain with any individual, even though that individual could make him President; that he had made no pledges to any party; that the Bucktails had made advances to him, while they were in the minority, but he had given them no promises; and that he expected less support from the Bucktails than the Clintonians, who were more prone to support a northern man. Adams said he had been frequently urged to allow his friends to nominate him but that he had always told them it was too soon; however, since steps had been taken by other candidates to bring them before the public, he should no longer object to a nomination if his friends considered it necessary. He thought that if done at all, it should be initiated by the Republican members of the Massachusetts legislature. The presence of Federalists in such a caucus ought to be avoided as likely to do more harm than good. Plumer accordingly wrote to Timothy Fuller, a member of the House of Representatives from Massachusetts, who had returned home, suggesting the idea of a nomination, and urging him at least to start the newspapers to work, even if nothing more were done. Plumer also asked his father whether it would not be advisable for him to write an article, with like purpose, for the New Hampshire papers.[2] Fuller, upon his return from Massa-

[1] William Plumer, Jr., to William Plumer, January 3, 1822. *Cf.* Adams, *Memoirs*, vol. V, pp. 477–478. On Lowndes's nomination, see Meigs, W. M., *Life of Calhoun*, vol. I, pp. 290–291.

[2] William Plumer, Jr., to William Plumer, January 3, 1822. Previous to this conversation Adams had discussed the situation with Fuller; see Adams, *Memoirs*, vol. V, pp. 461, 468–469.

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chusetts, reported that with a few exceptions, the Republicans there warmly favored Adams. A nomination by the Republican members of the legislature could have been obtained, if it had been thought proper, but it was deemed advisable to do no more for the present than have a sort of formal understanding on the subject.[1]

In the meantime, Clay's friends were striving to get him nominated in the western states. The Kentucky legislature had done so and similar efforts were being made in Ohio and Missouri. In the latter state Senator Benton went to the legislature and persuaded the members to hold a caucus, at which, however, it was determined that it was inexpedient to make any nomination.[2] At a subsequent meeting Clay was nominated. In Ohio, Clay was not so successful, for in that state the members of the legislature determined, by a small minority, that any nomination was inexpedient. Adams told Plumer that it was his opinion that Clay was trying to get what support he could to prevent a choice by the electors and "to make his bargain in the House." With nine western states to support him, Clay would either force Crawford's friends to join him and thus become President, or, if Crawford should be strongest in the House, Clay would consent to his being President provided he himself be made Secretary of State, and, added Adams, "Heir apparent to the Presidency"[3]—a most interesting conjecture in the light of what later transpired. Rumors at this early date of an understanding between Adams and Clay were denied by Adams, who declared that with respect to the forthcoming presidential election he had no understanding with anyone.[4]

Peter B. Porter wrote to Clay from Albany, New York, on January 29, 1822, that his prospects in that state were highly flattering. Porter urged Clay to pay particular attention to

[1] William Plumer, Jr., to William Plumer, January 28, 1822.

[2] *Ibid.*, December 10, 1822.

[3] *Ibid.*, December 21, 1822.

[4] Adams, *Memoirs*, vol. VI, p. 114.

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Martin Van Buren, who was believed to be turning from Crawford toward Clay. He advised Clay against any coalition with DeWitt Clinton.[1] Directly contrary was the advice of Patrick Henry, who urged Clay to make Clinton President. Clinton, argued Henry, would in turn support Clay as his successor.[2] Clay wrote his friend Francis Brooke that he would not participate in any intrigues or make any promises or pledges, so that, whether elected or not, he would have nothing with which to reproach himself.[3] In February, 1823, Clay expressed the opinion that Adams was at that moment the most formidable of the candidates. He did not mean to imply, however, a preference for Adams.[4]

A conversation between Adams and Plumer brought out the fact, surprising to Plumer, that Adams considered Jackson a very formidable presidential candidate. Adams stated that he preferred Jackson to any of the other candidates. He believed that Jackson would administer the government free from bargains and corruption, which was more than he could say for Crawford, Calhoun, Clay or Clinton. He thought Jackson would get the support of all the western states, if it were certain that Clay could not succeed, and Pennsylvania. In reply to Plumer's objection that Jackson was rash and indiscreet, Adams said that in this respect Jackson was misunderstood; that no man listened more readily to advice, but that once his decision was formed, Jackson was inflexible. Adams stated that it had been his duty to examine carefully certain of Jackson's acts and that whatever hastiness there might have been in manner, there was nothing "which did not rest on the soundest principles of justice, policy, the law of nations, and the public good." As President, Adams added, Jackson might perhaps "be guilty of some trifling indiscretions; but they

[1] *Works of Henry Clay* (Colton, ed.), vol. IV, pp. 62–63. Van Buren was at first favorable to Crawford; see *Autobiography of Martin Van Buren*, American Historical Association, *Reports* (1918), vol. II, p. 140.

[2] Patrick Henry to Clay, August 21, 1822; *Works of Henry Clay*, vol. IV, p. 67. The writer of this letter probably was the son of the Revolutionary hero.

[3] *Ibid.*, vol. IV, p. 72.

[4] *Ibid.*, vol. IV, pp. 74–75.

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would not affect the course of public measures, nor prevent his administering the government with wisdom and integrity."[1]

Concerning the other candidates, Adams said that there was in Clay a root of principle which made him a much safer man than Crawford or Calhoun. He was quite bitter in his criticism of Calhoun, who, he charged, had labored incessantly to injure him. He doubted if Calhoun himself entertained any sanguine expectations of success and believed that Calhoun's object was to get what strength he could and throw his support to the party which would offer him the best terms. Plumer wrote that it was evident that Adams no longer had confidence in Calhoun and that if elected President he would not appoint Calhoun Secretary of State. Plumer's conclusion from this conversation was that Adams wished to advance Jackson, in case he himself could not be President.[2]

By the winter of 1823 the question of a congressional nomination had become acute. The opposition to it was strong in the West and among the supporters of Adams, Jackson and Calhoun. Only Crawford's friends seemed to favor it. There was a tendency on the part of most of the members of Congress to await the action of the various state legislatures in order to catch the drift of public opinion.[3] With the organization of the House of Representatives the selection of a Speaker was once more complicated by its possible influence on the forthcoming presidential election. Opponents of Clay again argued that his election to the speakership would aid him in the presidential race, but without avail.

Continued efforts on the part of Crawford's friends to call a congressional caucus met with disfavor. The members from New Hampshire, for example, held a meeting to determine upon a course of action and voted unanimously against attending a caucus at that time. Several thought it probable they

[1] William Plumer, Jr., to William Plumer, December 3, 1823. Adams had expressed a similar opinion of Jackson when recommending him to Monroe for the position of minister to Mexico; Adams, *Memoirs*, vol. VI, pp. 128–129. See also, *Private Correspondence of Daniel Webster* (Webster, ed.), p. 346.

[2] William Plumer, Jr., to William Plumer, December 3, 1823.

[3] *Ibid.*, December 10, 1823.

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would attend a caucus if called toward the close of the session. All, with one exception, declared themselves in favor of Adams.[1] Although the real object in calling a caucus at so early a date was to influence the state legislatures, the latter seemed to be turning against the caucus system altogether. Tennessee and Maryland had already adopted resolutions against it.[2]

Calhoun, in a conversation with Plumer, declared that he was decidedly opposed to a caucus. He maintained that it was "not a question of men, but of principle, between those who are willing to trust the election to the people at large, and those who wish to govern the people through the agency of a few intriguing politicians in the several states."[3] Calhoun's suggestion was carried still farther by Pennsylvania, whence came the proposal of a convention of delegates from all parts of the Union, a forerunner of the present National Convention. Plumer termed this "an unpracticable expedient, but one which may serve to divert attention from a Congressional Caucus."[4]

Under date of February 4, 1824, Plumer received a note from Charles Rich, Representative from Vermont, asking whether he deemed it expedient to attend a congressional caucus, should one be called, for the purpose of nominating candidates for President and Vice-President; also whether Plumer's colleagues would attend or not.[5] Plumer now began to feel that the sooner the caucus was called the better, as it would serve to unite the other candidates against Crawford. Adams informed Plumer that he had lately had overtures from nearly all the candidates. Crawford's friends sent a formal offer of the vice-presidency if Adams's friends would support Crawford for President. The proposal was that the supporters of both men should go into caucus together and nominate them for the respective offices. Adams's answer was that he never

[1] William Plumer, Jr., to William Plumer, December 22, 1823. *Cf.* Adams, *Memoirs*, vol. VI, p. 244.

[2] William Plumer, Jr., to William Plumer, December 22, 1823.

[3] *Ibia.*, December 31, 1823.

[4] *Ibid.*, January 15, 1824.

[5] Charles Rich to William Plumer, Jr., February 4, 1824.

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could consent to receive a nomination from a congressional caucus for any office; and as to being Vice-President under Crawford "he could not consent to any such arrangement, and should decline being a candidate for that office, if nominated."[1] The advances on Calhoun's part, Adams said, were direct and formal, through intervention of a common friend, while those from Clay were more remote and indefinite. Nothing as yet had been heard from Jackson's friends.[2]

The congressional caucus was eventually set for February 14, but a large number of members of Congress signed a paper declaring that out of two hundred and sixty-one members, one hundred and eighty-one would not attend a caucus.[3] When the caucus met, Crawford's strength was found to be less than even his opponents anticipated. Only sixty-six members attended, of whom sixty-two voted for Crawford, two for Adams, one for Jackson and one for Nathaniel Macon of North Carolina. Two more votes, given by proxy, were added to Crawford's list, bringing his total to sixty-four.[4]

Evidently the supporters of Crawford had begun to lose confidence, for in the week preceding the caucus, Hutchins G. Burton of North Carolina had told Plumer that in case it became probable that Crawford could not be elected, North Carolina would support Adams. He wished Plumer to ascertain from Adams whether it would be acceptable to him to have Crawford as Vice-President if Adams became President. Plumer spoke to Adams about the proposal and then advised

[1] William Plumer, Jr., to William Plumer, February 5, 1824. Adams had made a similar statement to John W. Taylor of New York; Adams, *Memoirs*, vol. VI, p. 237.

[2] William Plumer, Jr., to William Plumer, February 9, 1824. *Cf.* Adams, *Memoirs*, vol. VI, pp. 241–242. Calhoun emphatically denied the truth of statements in circulation that there was a coalition between Adams and him; *Correspondence of John C. Calhoun* (Jameson, ed.), American Historical Association, *Reports* (1899), vol. II, p. 217.

[3] William Plumer, Jr., to William Plumer, February 9, 1824. See also Parton, James, *Life of Andrew Jackson*, vol. III, p. 26.

[4] William Plumer, Jr., to William Plumer, February 16, 1824. There are no entries in Adams's *Memoirs* between February 5 and March 6, the important period of the meeting of the congressional caucus.

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Burton to see Adams, which he did. After a conversation with Adams, Burton went to Crawford. The latter said that if his friends thought it advisable he was willing to become Vice-President under Adams. In the course of these conversations Adams told Plumer, in confidence, that, if chosen President, he would retain the present members of the Cabinet, provided they were willing to serve under him. This would leave only one vacancy, that of Secretary of State. Whether that would be filled by advancing Crawford or Calhoun, or by the appointment of some new man, Adams did not say. In Plumer's opinion there were only two other men who deserved the place, DeWitt Clinton and Henry Clay.[1]

The new star in the political firmament began now to shine with added brilliancy. Calhoun's friends in Pennsylvania turned from him to Jackson and the latter was recognized as a truly formidable candidate. By some it was thought that in addition to Pennsylvania, Jackson would get Tennessee, Mississippi, Alabama, Missouri, Louisiana, North Carolina, South Carolina, and possibly even Georgia. These votes would bring him into the House of Representatives with the highest number, or at any rate next to Adams.[2] Calhoun was now regarded as virtually withdrawn, although formal action had not yet been taken. Clay's hopes hinged on winning New York, a contingency none too promising. In fact, internal politics in New York threatened, as on many other occasions, to complicate the situation. Refusal of the New York legislature to pass a law providing for the election of presidential electors by the people, instead of by the legislature, had aroused great opposition to the Albany Regency.[3] The act of the legislature in removing Clinton from the office of Canal Commissioner, which he had held with distinction for fourteen years, was likely, according to many, to produce a strong reaction in his favor and perhaps make him

[1] William Plumer, Jr., to William Plumer, February 16, 1824. Adams reports a conversation with Burton a few days later; Adams, *Memoirs*, vol. VI, p. 265.

[2] William Plumer, Jr., to William Plumer, February 29, 1824.

[3] For a detailed account see Hammond, J. D., *History of Political Parties in New York*, vol. II, pp. 130–132, 140–154.

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governor.[1] Moore, an agent of Clinton, went to Washington to sound the various candidates as to future political possibilities. It was reported that he had offered Clinton's support to Jackson if Jackson would make Clinton his Secretary of State, but that Jackson had replied that Adams should have that office, if he would accept it, in preference to all others. Moore then tried to persuade the New York members of Congress, unfriendly to Crawford, to join Jackson, but failing likewise in this, he sought an interview with Adams. He asked Adams what his feelings were toward Clinton. Adams said that he held the highest opinion of Clinton's talents, patriotism and public spirit. He did not, however, promise to bring Clinton into the Cabinet, if elected. Adams told Plumer that Clinton's object appeared to be to become governor of New York and toward that end he desired the support of Adams's friends, in return for which he would support Adams for the presidency.[2]

But all was not harmony for Adams in New England, nor was King Caucus to perish undefended. In a long letter to Plumer, Isaac Hill, editor of the *New Hampshire Patriot*, defended the caucus nomination of Crawford and severely criticised Adams, Plumer, and all others who refused to abide by the decision of the caucus. Hill regarded Crawford as the "regular Republican candidate", duly nominated by the traditional, recognized method. He held that Crawford was none the less "regular" because nominated by a "partial caucus," to quote Plumer's own description of it, and said that the blame for the small number of members who attended must rest on those who remained away to conceal the weakness of their own candidates. He asked what had changed Adams's opinion of the caucus since he attended an earlier one and voted for Madison.[3]

The Crawford caucus had nominated Albert Gallatin for Vice-President with the hope that his selection might help to

[1] William Plumer, Jr., to William Plumer, April 20, 1824. See *Autobiography of Martin Van Buren*, pp. 142–144.

[2] William Plumer, Jr., to William Plumer, April 26, 1824. *Cf.* Adams, *Memoirs*, vol. VI, pp. 292–294, 302.

[3] Isaac Hill to William Plumer, Jr., April 22, 1824.

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swing Pennsylvania into the Crawford column. The ascendancy of Jackson and the union of Calhoun's name as Vice-President with his had defeated the carefully laid plans of the Crawford men and Gallatin's name was regarded as a dead weight on the caucus ticket.[1] Gallatin was therefore urged to withdraw and did so.[2] Crawford's health, which it had been thought might lead him to withdraw, was so far restored that there was no likelihood of his abandoning the fight. His political prospects, according to Adams, had altered little, except that he had lost the support of Representative Walter Forward of Pennsylvania, who had joined the Jackson forces.[3]

Adams told Plumer that the present state of the votes was one which would show the North the policy of the South and West. The North had its candidate for the presidency but did not think of a Vice-President from the same section; whereas in the South the friends of Crawford supported Macon, and those of Jackson supported Calhoun—the North was to have nothing. It was the country and not the man the southerners disliked. Eventually this policy would unite the North and result in ultimate, if not immediate success. Turning his attention to Congress, Adams regarded the New England members as certain to support him; there was no state which could desert him. He thought that New York could also be relied upon. The combination of New England and New York made him stronger than any other candidate. Moreover, Jackson had received fewer votes from the people in Maryland than he. In New Jersey, Jackson had succeeded only by the help of the friends of Clay and Crawford, and in North Carolina by the aid of Adams's friends. Adams declared that he had succeeded nowhere except upon his own strength, a fact which proved that his party was solid and divided by no conflicting interests. If Jackson were to lose the votes which the friends of other candidates gave him, he would fall below Adams. Adams's plan, therefore, was to mark time, making no advances

[1] William Plumer, Jr., to William Plumer, May 3, 1824.

[2] *Writings of Albert Gallatin* (Adams, ed.), vol. II, pp. 293, 296–299.

[3] John Quincy Adams to William Plumer, Jr., July 26, 1824.

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to any party. This policy, he felt certain, would result in victory over the divided forces of his opponents. Crawford he regarded as out of the race; the people at large would not take him up after the caucus had given him such scanty support. Adams spoke of Calhoun as having acted a very selfish part and doubted if he would ever rise higher than the vice-presidency. On the whole, concluded Plumer, "Mr. Adams seemed neither confident of success, nor disposed to despond."[1]

Plumer was surprised just at this time to be approached by Daniel Webster, who urged firmness, yet moderation, in the presidential election, supporting Adams, yet not quarreling with Jackson. If Adams were successful, all would be well; if Jackson, the North, by not quarreling with him, would come in for its share in the administration. Webster said that he had sought nobody's alliance and nobody had sought his, but confided that he might perhaps be thought of among others in forming the new list of appointments under the next President. Asked by Plumer whether he expected one of the departments, Webster answered that he had no wish to return to Washington in any capacity except as a member of the House. When Plumer inquired whether Webster desired the mission to London, the latter said that "perhaps it would be idle in me to shoot my arrow so high." Interrupted at this point, Webster added that he would see Plumer again but urged, in passing, that they must act together in mutual assistance. Although not certain as to Webster's ultimate object, Plumer felt sure that he wanted to go as minister to Great Britain and that he meant to take no very decided course in relation to the presidency, so that, whoever succeeded, he might stand well with the incoming administration.[2]

There was considerable doubt for some time after the November election whether Crawford or Clay would be the third candidate, with Jackson and Adams, to be voted upon by the

[1] William Plumer, Jr., to William Plumer, December 9, 1824. Adams in his *Memoirs* does not record this conversation.

[2] William Plumer, Jr., to William Plumer, December 7, 1824. *Cf.* Adams, *Memoirs*, vol. VI, p. 442.

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House of Representatives. The reports from Louisiana, reaching Washington in the middle of December, made it certain that it would be Crawford. This decision also emphasized the importance of Clay's position in the selection to be made by the House. Representative Duncan McArthur of Ohio told Plumer that the delegation from his state was about equally divided between Adams and Jackson and the issue was in doubt. The Ohioans were balanced between the wish to have a western President at the moment, in the person of Jackson, whom they did not much like, and the certainty of having Clay, by the aid of the North, at some future time. It was clear that it was very much in Clay's power to elect the President by throwing western support towards Jackson or Adams.[1]

When Plumer next saw Adams the Secretary of State seemed in better spirits and appeared to entertain more expectations of success. Friends of Crawford and Clay had again made overtures to him. The Virginia delegation had assured him that, after voting two or three times for Crawford, they would support him rather than Jackson. Senator James Barbour expressed the opinion that "it would be treason to the Constitution to hold out and prevent an election by the House until the 4th of March, so as to give the actual Presidency to the Vice-President."[2] The friends of Clay intimated that they would perhaps vote for Adams in the first instance and thus secure his election at the first ballot. They counted the votes by states as follows: New England six, New York, Ohio, Indiana, Illinois, Kentucky, Missouri and Louisiana, thirteen in all. Thus Clay's supporters would have the credit of making Adams President and would greatly strengthen Clay's chances to become the next President. Although nothing definite had been promised, the probability of Clay's adherents taking this course had been mentioned to Adams by one or more of Clay's confidential friends.[3]

Western leanings toward Adams as the second choice after

[1] William Plumer, Jr., to William Plumer, December 16, 1824.

[2] Adams, *Memoirs*, vol. VI, pp. 450–451.

[3] William Plumer, Jr., to William Plumer, December 24, 1824.

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Clay had been indicated in Clay's letters to his political confidants. On February 23, 1824, he had written Francis Brooke that Crawford's friends were endeavoring to exclude him from choice by the House of Representatives in the hope that Clay's western followers would support Crawford if they could not get him. In Clay's opinion Crawford could not be elected in the House. The northwestern states would vote for no slavery man but Clay; and, with him out of the race, would turn to Adams.[1]

When it was certain that Clay was out of the race the supporters of Adams, Jackson and Crawford began to court Clay's favor, knowing full well the power he held in the final determination of a President by the House. Adams was sounded as to his attitude toward Clay. He was advised that Clay was disposed to support him, "if he could at the same time be useful to himself."[2] Adams said that he harbored no hostility toward Clay. He inferred from these conversations that Clay was favorable to him and that if Clay's friends knew that Clay would be given a prominent place in the incoming administration they would be induced to vote for Adams. No definite promises were made on either side, according to Adams.[3] In a letter to Francis P. Blair, under date of January 8, 1825, Clay stated his preference for Adams and his determination to support him. He expressed a fear of harmful results to the governmental institutions if a military leader like Jackson were elected. He said that although his friends had been influenced in their favorable attitude toward Adams by the fact that their hopes for Clay's ultimate success would "in the end be more likely to be accomplished by so bestowing their votes," he himself had been guided solely by the public good.[4] More direct evidence of Clay's decision to throw his support to Adams was soon forthcoming. At a public dinner given on the first of

[1] *Works of Henry Clay*, vol. IV, p. 87.

[2] Adams, *Memoirs*, vol. VI, p. 444. Senator Benton of Missouri claimed that Clay had written him on December 6, 1824, of his determination to vote for Adams; Benton, Thomas H., *Thirty Years' View*, vol. I, p. 48.

[3] Adams, *Memoirs*, vol. VI, pp. 446–447.

[4] *Works of Henry Clay*, vol. IV, p. 110.

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January, 1825, to Lafayette, Clay, who sat next to Adams, whispered to him that he wished to see him in private and have a confidential conversation with him.[1] On January 9, Adams received a note from Clay suggesting, if agreeable, that he should call on Adams that evening. The two men met and spent three hours in a free conversation, in which they went over their past differences, their present views of policy and their expectations for the future. With respect to the presidency, Clay told Adams that after a full consideration of all the circumstances, he had determined to support Adams in preference to either Jackson or Crawford. In relating these facts to Plumer, Adams said that no one else had been informed, and he urged Plumer to regard the matter as confidential, since Clay wished to take his own time about making any announcement and would probably not do so for several weeks.[2] Clay's reason for postponing his announcement was, according to Adams, the need for time in which to overcome the prejudices of many of his friends who favored Jackson, a western man, in preference to Adams, an eastern man. Unfortunately for the historian, Plumer "did not think it decorous to enquire more particularly—nor did Mr. Adams seem disposed to say anything further of what passed between them."[3]

When it was learned that Clay had decided to support Adams he was attacked by the friends of Jackson, Crawford, Calhoun and Clinton. Clay declared his determination not to swerve from his duty. Commenting upon possible cabinet appointments he said he wanted no office and did not know whether Adams, if elected, would offer him a place or not.[4] Clay was assured that his acceptance of a cabinet position from Adams would meet with the approval of his supporters in Kentucky and Ohio.[5]

[1] William Plumer, Jr., to William Plumer, January 4, 1825.

[2] *Ibid.*, January 11, 1825.

[3] *Ibid.*, January 20, 1825.

[4] Clay to Francis Brooke, February 4, 1825; *Works of Henry Clay*, vol. IV, pp. 113–114.

[5] J. J. Crittenden to Clay, February 15, 1825, *ibia.*, pp. 117–118; W. Creighton to Clay, February 19, 1825, *ibid.*, pp. 118–119.

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Jackson's friends recognized that his cause was becoming more desperate and it was rumored about Washington that they were striving hard to make a bargain with the Crawfordites. Even if successful in this, there was no assurance of ultimate success in the election. The states conceded to Jackson were Pennsylvania, South Carolina, Tennessee, Indiana, Mississippi and Alabama; to Crawford, Delaware, Virginia, North Carolina and Georgia—a total of ten. Even if all of the Crawford states voted for Jackson—which was doubtful—he would need three more states to secure the necessary majority. Consternation was spread in the Jackson ranks on January 24, 1825, when the members of the House from Ohio and Kentucky, following private caucuses, met publicly in one of the committee rooms and, inviting in some of the leading friends of Jackson and Crawford, informed them of their determination to vote for Adams. On the same day Louis McLane, the sole Representative from Delaware and an avowed Crawfordite, informed Plumer that "they might as well think of turning the Capitol upside down as of persuading him to vote for Jackson." Hope of electing Adams on the first ballot was now expressed,[1] and this hope became a certainty when, on February 9, Adams received the majority of votes in the House, the vote being Adams 13, Jackson 7 and Crawford 4. In three of the state groups—New York, Maryland and Louisiana—it was decided by the vote of a single individual. However, Adams's friends counted upon New Jersey and Indiana had a second vote been required, and upon Delaware, Virginia and Georgia if Crawford dropped out.[2]

In the last days preceding the vote by the House, Adams's attitude toward the Federalists had become an important point. On February 3, 1825, Henry R. Warfield, one of the Representatives from Maryland, wrote to Daniel Webster for information concerning Adams's stand on the Federalists. Warfield explained that of the nine members from his state he was the only one who had not expressed his opinion as to the rival

[1] William Plumer, Jr., to William Plumer, January 24, 1825.

[2] *Ibid.*, February 13, 1825.

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presidential candidates. It was highly possible that the vote of the state would devolve upon him and it might even be that the vote of Maryland would determine the President on the first ballot. Warfield's political associates in Maryland were mostly Federalists and they feared that the election of Adams would result in the total exclusion of Federalists from office. While Warfield personally did not fear such an issue he was anxious to have Webster's opinion.[1]

Webster replied that he was satisfied in his own mind on this question and would give his vote to Adams, "cheerfully and steadily," an assurance which he had given to Adams himself.[2] Webster informed Adams of Warfield's dilemma and Adams asked that Warfield come to see him.[3] Warfield did so and Adams assured him that although he had separated from the Federalist party on matters of principle, he had always done justice to the talents and services of individual Federalists and would continue to do so. Warfield declared himself satisfied[4] and it was his vote which swung the balance in favor of Adams in the Maryland delegation.

Stephen Van Rensselaer of New York was another doubtful member who, upon advice from Webster, called upon Adams and received an assurance similar to that given Warfield.[5] In turn it was Van Rensselaer's vote which decided New York for Adams.[6]

After such an account of the events leading to the election of Adams it seems hardly necessary to enter upon a detailed discussion of the charges of corruption and bargain following the offer of the position of Secretary of State to Clay by Adams. Plumer wrote that:

[1] *Private Correspondence of Daniel Webster*, pp. 377–378.

[2] *Ibid.*, pp. 378–380; see Adams, *Memoirs*, vol. VI, pp. 492–493.

[3] Adams, *Memoirs*, vol. VI, pp. 497–498.

[4] *Ibid.*, vol. VI, pp. 499–500.

[5] *Ibid.*, vol. VI, pp. 493–494.

[6] For interesting detailed accounts of the vote of Van Rensselaer, see *Autobiography of Martin Van Buren*, pp. 149–152; also Smith, Margaret B., *Forty Years of Washington Society*, pp. 184–186, 190–193.

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this was anticipated by everybody as a matter of course. The Western States, nine in number, with a population of two or three millions, have never had a President, a Secretary of State, or any other commanding station in the Government. Upon every principle they were entitled to notice. When to this we add, that five of these states voted for Mr. Adams, and thereby pledged themselves to his support, and that all this was done by the friends of Mr. Clay, it is hardly necessary to suppose any corrupt bargain, or intrigue between Clay and Adams to account for the promotion of a man, who had already been twice offered a seat in the cabinet of former Presidents.[1]

Letters of approval of his action came to Clay from John Tyler, Chief Justice Marshall and Judge Joseph Story.[2] The latter wrote, "that if your vote had been other than it was, I would have found it somewhat difficult to have reconciled it with your known public opinions on subjects intimately connected with executive duties."

The friends of Jackson were not so easily convinced and just as the campaign of 1824 began in earnest in 1820, so the beginning of the campaign of 1828 was coincident with the election of John Quincy Adams in 1825.

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[1] William Plumer, Jr., to William Plumer, February 16, 1825. For previous offers of official position to Clay, see *Works of Henry Clay*, vol. IV, p. 114.

[2] John Tyler to Clay, March 27, 1825, *Works of Henry Clay*, vol. IV, pp. 119–120; John Marshall to Clay, April 4, 1825, *ibid.*, vol. IV, p. 121; Joseph Story to Clay, *ibid.*, vol. IV, p. 123.

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PROTECTING PROPERTY AND LIBERTY, 1922–1924

WHAT is to follow is a conspectus of some Supreme Court decisions interpreting those provisions of the Federal Constitution designed to restrict state and national interferences with individual liberty and property.[1] The more important of these provisions are the due-process clauses of the Fifth and the Fourteenth Amendments. These clauses are not defined in the Constitution and their meaning can be determined only by discovering what they are authoritatively construed to forbid and to permit. The law of due process is less a law of principles than a law of particularities. Congress and the state legislatures may use their respective powers for recognized ends provided they refrain from using them immoderately. We learn what ends are legitimate and what means are moderate only by learning what the Supreme Court sanctions.

A few more specific constitutional clauses occasionally come into play. They, too, often leave not a little latitude of interpretation to the courts. Judges are not automatons in deciding when the obligation of a contract has been impaired, what is a direct tax or double jeopardy or an infamous crime or a wrongful search and seizure. Considerations of public policy find room for influence in the judicial interpretation of supposedly specific constitutional prohibitions.

The cases to follow are classified under the three heads of police power, taxation and eminent domain. While Congress has no police power as such, it uses its granted powers for police purposes and its legislation in its sphere admits of the same classificatory labels as those which have come to be ap-

[1] The period covered is that represented by the annual terms of court beginning in October, 1922, and October, 1923. Cases during the same period dealing with the respective spheres of state and federal action are reviewed in "Umpiring the Federal System, 1922–1924", POLITICAL SCIENCE QUARTERLY, vol. 40, pp. 101–126, Decisions of earlier years are dealt with in POLITICAL SCIENCE QUARTERLY, vol. 35, pp. 411–439; vol. 36, pp. 469–500; and vol. 37, pp. 486–513.

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plied to the exercise of the reserved powers of the states. The restrictions on state and federal power are not identical and the interpretation of a restriction in identical words may vary according as it is sought to be applied to a state or to the nation. Due process does not confine federal taxation as it confines state taxation. War power is a stronger power than ordinary state police power. The limits of due process are plotted by judicial umpiring of competing claims of public power and private interests. This is why due process can be known only by its particularistic applications. The differences between due process as a brake on state power and due process as a brake on national power are not essentially different from the differences between due process as a brake on different state powers or a brake on different national powers. Due process does not restrain federal regulations of foreign commerce as it restrains federal regulations of interstate commerce. The differences are the product of judicial views of what importance should be attached to the particular governmental power being exerted. With this warning against trusting any talk about due process beyond its application to the specific case in hand, it seems safe enough to use a common pigeonhole for cases involving action of the states and action of the United States.

I. Police Power

In two cases arising under the Transportation Act of 1920 the question was whether Congress was really regulating commerce or merely taking property. Such a question involves a fusion of two technically distinct constitutional issues. There is the issue whether the act is within the general scope of the power conferred by the commerce clause and the issue whether a carrier has been deprived of property without due process of law. In certain situations the issues become fused, since any restraint or imposition that seems to the court to be arbitrary or unwarranted would usually be held to be beyond what is "necessary and proper" for carrying out one of the enumerated powers. The so-called "recapture provision" of the Transporation Act required roads which receive from rates a sum in excess of the assumed fair return on their fair value to

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hold half of it for designated capital uses and to pay the other half to the government to be put into a revolving fund for use in aid of the transportation service of the country. This was sustained in *Dayton-Goose Creek Railway Co.* v. *United States*[1] as consistent with the requirements of due process and as a regulation of commerce and not merely a taking of money after the commerce which produced it was completed. The idea of Chief Justice Taft is that Congress recaptured less than what it might have prevented the complaining roads from receiving from rates in the first place, and that therefore the plan is a legitimate one to adjust the conflict between the aim of having rates proportional on all roads and the aim of restricting the rates on each road to its requisite fair return.

Somewhat similar was the problem involved in the earlier *New England Divisions Case*[2] which sustained orders of the Interstate Commerce Commission whereby returns from joint hauls over several roads were apportioned with reference to the financial needs of the connecting carriers and not on the basis of the relative contribution of each road to the total carriage. Mr. Justice Brandeis laid down that the reasonableness of rate divisions does not depend upon distribution strictly on a mileage basis, but that other factors may appropriately be considered. He placed some reliance on the fact that the various roads had previously been granted permission to increase rates and he suggested that this division might be regarded as an incident of the increase whereby more of it was given to the roads that needed it than to those that could survive without it. He also introduced some flavor of the taxing power to make the device seem constitutionally palatable.

For twenty-five years the Supreme Court and its satellites have been professing to apply to the problem of rate regulation the formulation that the rates must not be reduced below the point requisite to a fair return on the fair value of the property devoted to the enterprise. Fair return has been fixed with reference to the return on comparable, contiguous, contempor-

[1] (1924) 263 U. S. 456, 44 Sup. Ct. 169.

[2] (1923) 261 U. S. 184, 43 Sup. Ct. 270.

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ary commercial adventures. Fair value has been fixed with reference to some compound of contradictory considerations concocted by the alchemy of uncontrolled and changeful compromise. The nearest thing to a standard has been a leaning toward reproduction cost new less depreciation. This leaning, however, has been modified by occasional correctives. The Supreme Court could not bring itself to make believe that there is a big city with no railroad and thereupon to estimate the reproduction cost of the land long held by the carrier by guessing at the hypothetical cost of hypothetical condemnation of hypothetically needed real estate. In a simpler situation the court could not think that pipes under a highway derive immediate enhancement in value from the paving of the street overhead, though of course it would cost more to put pipes under paving than under unthatched dirt. Yet notwithstanding occasional lapses into common sense, the court has clung to its formula of present fair value and has roughly assumed that this fair value of a plant in place for decades varies from time to time as the costs of construction rise and fall.

Now for the first time a Justice of the Supreme Court has ventured upon an explicit consideration of the folly of it all. In *Southwestern Bell Telephone Co.* v. *Public Service Commission*[1] all the court were agreed that the rates were confiscatory and that the valuation recognized by the commission and the court below was too low. The majority opinion of Mr. Justice McReynolds follows familiar lines of reference to cost of reproduction. In a separate concurring opinion Mr. Justice Brandeis breaks new judicial paths. Only Mr. Justice Holmes shares his sense. The foundation assertion of Mr. Justice Brandeis is that "the thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in the enterprise." It is capital that gets returns, not cars and ties and rails. It is capital that is entitled to constitutional protection, not cars and ties and rails. The capital that goes into a railroad goes in in different legal forms. The greater part goes in by way of bonds entitled only to a

[1] (1923) 262 U. S. 276, 43 Sup. Ct. 544.

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fixed contractual rate of return. Some goes in by way of preferred stock with a limit on the possible rate of return. Other capital goes in by way of temporary loans or by way of separate ownership of equipment leased to the road for annual rentals. Most of the rest goes in by way of common stock, and it is only this common stock that has a chance to get from year to year an increasing number of dollars by way of income. The charges for other capital than the common stock are fixed charges. As Mr. Justice Brandeis puts it:

> In essence, there is no difference between the capital charge and operating expenses, depreciation, and taxes. Each is a part of the current cost of supplying the service, and each should be met from current income. When the capital charges are for interest on the floating debt paid at the current rate, this is readily seen. But it is no less true of a legal obligation to pay interest on long-term bonds, entered into years before the rate hearing, and to continue for years thereafter; and it is true also of the economic obligation to pay dividends on stock, preferred or common.

What Mr. Justice Brandeis proposes is that the rate base be the capital prudently invested in the enterprise. This would be stable, where the rate base that squints toward reproduction cost is vacillating. The evils of such a vacillating base are pointed out in detail by the opinion. The necessity for a new determination from time to time imposes great expense on rate-regulator and rate-regulatee alike. It takes from railroad officials time and thought that should be put into the business of running and improving the railroad. It creates strained relations between the roads and the public. The railroad may win a lawsuit at the expense of community hostility that will rise to vex it when it later needs community compliance with proposals that cannot be referred to courts. The bondholders who furnish some seventy-five per cent of the capital invested in utilities cannot gain from a fluctuating rate base, because their "return, expressed in dollars, would be the same, whatever the income of the company." They can only lose, when the lowered costs of construction would reduce the base and endanger their agreed return. In fact the stockholder does not receive an increased

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return contemporaneously with a rise in the costs of construction, as the experience of recent years demonstrates.

Mr. Justice Brandeis objects, too, to a fluctuating rate of return, depending on rates current at the time the regulation is in issue. Such a rate "may fall far short of the capital charge then resting upon the company." Or if the bonds outstanding bear a low rate of interest and they represent the greater part of the capital in the business, the current rate of return applied to the present reproduction cost of the plant might yield the stockholder an inordinate bonanza. Mr. Justice Brandeis assumes a situation in which a million-dollar enterprise was financed by $750,000 of bonds bearing five per cent interest and by $250,000 of stock at par. Ten years later the price level may be 75 per cent higher and the interest rates 8 per cent. If the enterprise is then constitutionally entitled to 8 per cent on its reproduction cost of $1,750,000, this would mean "an income of $140,000, which would give the bondholders $37,500; and to the holders of the $250,000 common stock, $102,500,—a return of 41 per cent per annum."

What Mr. Justice Brandeis leaves somewhat doubtful is the determination of the rate of return to be allowed on the capital put into the enterprise. He rejects the rate prevailing at the time of regulation, and clearly enough he would in one way or another treat interest charges as current expenses. Apparently he has stocks as well as bonds in mind when he says that "where the financing has been proper, the cost to the utility of the capital required to construct, equip and operate its plant should measure the rate of return which the Constitution guarantees opportunity to earn." The utility, he says, must be allowed to earn the cost of its services, and cost includes capital charges which "cover the allowance, by way of interest, for the use of the capital, whatever the nature of the security issued therefor; the allowance for risk incurred; and enough more to attract capital." The mechanism to determine the rate of return to be allowed on common stock does not seem to be more explicitly set forth.

This, however, is a venial soft spot compared to the unendurable soft spots in the rule of the majority. Since Mr. Jus-

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tice Brandeis leaves this one spot somewhat soft, the majority might accept in full his choice of prudent investment for the rate base and then through kindliness in fixing the rate of return give to utilities what they think they ought to have. How any sane men can be willing to continue with the existing amorphosity is more than one sufferer therefrom can comprehend. Plainly enough the court thinks that capital in railroads is entitled under the Constitution to a chance to enhance in value. Mr. Justice Brandeis leaves that chance open by his reference to rates of return to make allowance for risk and to attract capital. He includes such elements as part of the cost of getting capital. Doubtless when construction costs go down, the majority of the court will see more clearly the unwisdom of the dominating element in their present attitude. Certainly the railroads will not then be asking that value be determined by reconstruction costs. Mr. Justice Brandeis points out that in the early days of rate controversies it was the public authorities who sought for the application of reconstruction costs, partly because actual cost was not ascertainable, partly because it had in many cases been imprudent, and partly merely because it had clearly been higher than reconstruction costs after the panic of 1893. Whether Mr. Justice Brandeis is correct in thinking that at bottom the court has always been reaching for prudent investment as the determinator of the rate base is somewhat doubtful—less doubtful, however, than whether it has ever had anything approaching a clear idea of what it was really reaching for. Roughly it seems that the court has sought to give investment in railroad property the opportunity to enhance in value up to the limit where enhancement is the fruit of its enjoyment of a monopoly. Mr. Justice Brandeis's opinion does not verbally preclude this. It constitutes by all means the most signal judicial contribution to the problem that we have ever had.

At the same term of court a rate was set aside in *Bluefield Water Works Co.* v. *Public Service Commission*[1] mainly for the reason that the commission and the court below had paid prac-

[1] (1923) 262 U. S. 679, 43 Sup. Ct. 675.

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tically no attention to the higher costs of construction since the erection of the plant but had fixed a valuation based substantially on original cost, less depreciation, plus ten per cent for going value and $10,000 for working capital. Mr. Justice Brandeis concurred in the judgment for the reasons given in his opinion in the Southwestern Telephone Case, but without presenting or applying those reasons in detail.

On the same day all the court but Mr. Justice McKenna concurred in *Georgia Railway & Power Co.* v. *Railroad Commission*[1] which approved of a valuation reached by the commission on the theory that it was seeking "present fair value". Mr. Justice Brandeis wrote the opinion of the court which declared that "the refusal of the commission and of the lower court to hold that, for rate-making purposes, the physical properties of a utility must be valued at the replacement cost, less depreciation, was clearly correct." Both the commission and the lower court had "considered" reproduction cost but refused to adopt it as the measure of value. How they actually picked upon the figure adopted is not disclosed. Evidently the majority of the Supreme Court thought the commission and the court below were good enough guessers so that their guess might be allowed to stand. What Mr. Justice McKenna thought about it may be inferred from some of the observations of his dissenting opinion:

> The commission in the present case conceded the rule [of present fair value], and violated it. It said: "The human race is only recovering from an experience the like of which the world never before endured,—a world of war,—a world upheaval,—an economic cataclysm. There are no stable measures of value today." Upon this the commission departed from the values which then prevailed, and from those that the rule of law prescribed, that is, the values prevailing *at the time the property was being used for the public*, and reverted to the values which obtained January 1, 1914,—values that had not existed for over seven years, and no prophecy could say when, if ever, they would exist again.

To separate the company from the conditions which existed at the

[1] (1923) 262 U. S. 625, 43 Sup. Ct. 680.

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time of regulation was arbitrary, and condemned it, the company, to accept an inadequate return upon the value of its property, not only for the then time, but for an indefinite future time. Similar action was condemned in the Southwestern Bell Telephone Co. Case—no "economic cataclysm" repelling. Similar action was condemned in the Bluefield Waterworks & Improvement Co. Case—no "economic cataclysm" repelling. May I ask what has become of the cataclysm? Had it settled in Georgia, in conscious indulgence to life and business in other parts of the country from its bewildering influence?

A year later in *Pacific Gas & Electric Co.* v. *San Francisco*[1] there was the peculiar problem of the weight to be given to the adoption of patented improvements which greatly decreased cost of operations and also rendered obsolete or obsolescent some of the existing equipment. The company claimed that the patented improvements should be valued by capitalizing the annual saving in expense. This was rejected below, partly because the evidence as to anticipated savings was deemed speculative. The cost of the patents had been trifling and had already entered into the calculation. The master seemed to give nothing more and to think also that the obsolescence due to the abandonment of equipment rendered useless by the new patented methods should be cared for later. The opinion of Mr. Justice McReynolds declares that the amount paid for the patents is not the measure of their value and observes that "if appellant's permissible profits depend upon lowered costs, and it is denied adequate return upon property which made the reduction possible, or recompense for the obsolescence, successful efforts to improve the service will prove extremely disadvantageous to it." He sends the case back to "be reconsidered in view of this opinion," but declines to say on the record before him "whether, under the peculiar circumstances here presented, the rate base should be fixed by adding to the agreed inventory some fair valuation of the patent rights, or whether prompt recoupment should be allowed for the obsolescence caused by their introduction, or whether appellant should be saved from actual ultimate loss by some other feasible method."

[1] (1924) 265 U. S. 403, 44 Sup. Ct. 537.

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Mr. Justice Brandeis, with whom concurred Mr. Justice Holmes, dissented on the ground that the issues were ones of fact which the master and the court had considered and upon which they had reached conclusions which he could not say were wrong. The litigation was already thirteen years old, the difficulties were due to the effort to apply the "present fair value" rule, and Mr. Justice Brandeis doubted whether any more satisfactory result could be reached by further efforts to apply a rule inherently unworkable. On the question of figuring depreciation, he referred to the similarity of the problem of life insurance and its solution by the adoption of the mutual plan with premiums clearly ample and with the return of any excess through dividends. In applying the analogy to the problem of depreciation he says:

> Legal science can solve the problem of the just depreciation charge for public utilities in a similar manner. Under the rule which fixes the rate base at the amount prudently invested, the inevitable errors incident to fixing the year's depreciation charge do not result in injustice either to the utility or to the community. If, when plant must be replaced, the amount set aside for depreciation proves to have been inadequate, and investment of new capital is required, the utility is permitted to earn the annual cost of the new capital. If, on the other hand, the amount set aside for depreciation proves to have been excessive, the income from the surplus reserve operates as a credit to reduce the current capital charge which the rates must earn. If a new device is adopted which involves additional investment (to buy a new plant or a patent right), the company's investment, on which the return must be paid, is increased by that amount. If the new device does not involve new investment, but the innovation involves increased current payments (like royalties for use of a process), the additional disbursement is borne by the community as an operating expense. The cost of a scrapped plant is carried as part of the investment on which a return must be paid unless and until it has been retired,—that is, fully paid for, out of the depreciation reserve. Thus, justice both to the owners of the utility and to the public is assured.

The most striking illustration of the tremendous power which the Supreme Court may wield by virtue of due-process clauses

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appears in *Adkins* v. *Children's Hospital*[1] which by a vote of five to three declared unconstitutional the minimum wage law for women passed by Congress for the District of Columbia. The majority opinion of Mr. Justice Sutherland succeeds satisfactorily enough in showing that no one of the precedents urged on behalf of the constitutionality of such legislation is precisely conclusive. When the opinion passes to the task of showing why the law is unconstitutional, it refers to no precedents. It contents itself with the economic analysis and the views of policy of its author. Mr. Justice Sutherland assumes that there is some determinable "fair value of the services rendered" by employees, and he declares the statute void for basing the minimum wage on the amount needed for the support of the worker rather than on this fair value of her services. Nowhere does he show how such fair value can be ascertained. He insists, however, that in so far as the sum fixed by the minimum-wage board exceeds this fair value, "it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole." The basis of the wage standard is said to be the "extraneous circumstance" that the employee needs to get enough "to insure her subsistence, health and morals." This need is said to "arise outside of the employment", and there is no mention of the fact that the worker cannot work unless she has food and shelter and clothing. The exaction of the statute is compulsory only if the employer chooses to employ the worker to work. Such a choice on his part, it would seem, might without an undue stretch of judgment be regarded by a legislature as a sufficient reason for imposing on the employer a peculiar responsibility to pay the worker enough to enable her to furnish the services which he requires and uses. It is one of the common functions of statutes to impose responsibilities where there was no responsibility before.

[1] (1923) 261 U. S. 525, 43 Sup. Ct. 394.

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Mr. Justice Brandeis did not sit in the case. Dissenting opinions were rendered by Chief Justice Taft, with whom Mr. Justice Sanford occurred, and by Mr. Justice Holmes. The Chief Justice refers to the evils of the "sweating system" and to the peculiar subjection of certain classes of employees "to the overreaching of the harsh and greedy employer." He points out that Congress has acted on the assumption that such employees "are not upon a full level of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered." What to the majority is the imposition of an enforced gratuity is to the minority the setting of a standard which may reasonably be regarded as socially desirable. The minority think that the precedents sanctioning legislative fixing of other standards in relations between employer and employee are sufficient to sanction a legislative standard of a minimum wage. The fixing of a minimum wage, says the Chief Justice, is a restriction on absolute freedom of contract "not any greater in essence than" the fixing of maximum hours of work, "and is of the same kind. One is the multiplier and the other is the multiplicand." Mr. Justice Holmes adds that, while he fully assents "that here as elsewhere the distinctions of the law are distinctions of degree", he can "perceive no difference in kind or degree of interference with liberty" between the hour restriction and the wage restriction. "The bargain is equally affected whichever half you regulate." The Chief Justice answers the majority assertion that "the power to fix high wages connotes, by like course of reasoning, the power to fix low wages", by pointing to the practical distinction between the two and noting that the majority opinion elsewhere admits that the line of distinction to be drawn is "a matter of degree and practical experience and not of pure logic." With evident relation to a reference in the majority opinion to the changes "in the contractual, political and civil status of women, culminating in the Nineteenth Amendment", Mr. Justice Holmes observes: "It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women, or that legislation cannot take those differences into account. I should not

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hesitate to take them into account if I thought it necessary to sustain this Act."

The court was unanimous in *Wolff Packing Co.* v. *Industrial Court*[1] which put an end to the Kansas plan of compulsory arbitration. Kansas declared that the production of food, fuel and clothing are businesses affected with a public interest, created an administrative body called the Court of Industrial Relations to deal with disputes between employers and employees in those enterprises, empowered the court to issue orders as to wages, hours and working conditions, and restrained employees from striking and employers from closing their plants in order to escape compliance with orders of the court. The opinion of Chief Justice Taft contains an interesting essay on the various types of businesses affected with a public interest, but declares that it is unnecessary to determine whether production of food, fuel and clothing may be put in one of the compartments of the class, since at any rate they are enterprises in which neither employer nor employee may be compelled by legislation or administrative order to continue. The attempted regulation of wages was held void as a deprivation of property and of liberty of contract without due process of law.

Workmen's compensation provisions were sustained in four cases. *Madera Sugar Pine Co.* v. *Industrial Accident Commission*[2] sanctioned compulsory payment, in case of death of an employee, to nonresident alien dependents. The court was not deterred by the contention that the state has no interest in such nonresident aliens and therefore lacks power to impose on employers a duty to pay compensation when they have been guilty of no legal wrong. *Sheehan Co.* v. *Shuler*[3] and *New York State Railways* v. *Shuler*[4] sustained provisions of the New York Act under which upon the death of employees who leave no dependents the employer is required to pay to the state the sum of $1000 to be divided between a fund for voca-

[1] (1923) 262 U. S. 522, 43 Sup. Ct. 630.
[2] (1923) 262 U. S. 499, 43 Sup. Ct. 604.
[3] (1924) 265 U. S. 371, 44 Sup. Ct. 548.
[4] (1924) 265 U. S. 379, 44 Sup. Ct. 551.

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tional rehabilitation and a fund to pay compensation to employees who after receiving one partial disability receive another which makes the disability total, the beneficiaries of these funds being not restricted to employees of the employer compelled to make contribution. *Cudahy Packing Co.* v. *Parramore*[1] sanctioned compulsory payment for the death of an employee killed at a railroad crossing on a public highway while on his way to work. The employee had no other route by which he could go to work, and this may possibly mark the limit of the decision. Justices McKenna, McReynolds and Butler dissented.

While the normal ownership of land extends indefinitely upward and downward, ownership of the surface may be separated from rights below. There are deeds of the surface in Pennsylvania which give no right of support and which contain reservations by the subsurface owner of the right to remove all the coal without any liability for resulting damage to what is above. Such subsurface owners were naturally not pleased with a Pennsylvania statute which forbade mining so as to cause the subsidence of any surface structure in which persons dwell or work, unless the owner of the coal is also owner of the surface. They took their displeasure to the Supreme Court and found solace in the decision in *Pennsylvania Coal Co.* v. *Mahon*[2] that the statute is unconstitutional. Mr. Justice Holmes for the majority insists that the statute is not demanded by considerations of safety, since notice of intended mining will afford adequate protection. He assumes that the end in view is one that the state may accomplish if it provides that the one on whom it confers a support not granted by his deed shall pay for the loss which the restraint on mining causes to his nether neighbor. The only question is whether the state does not go too far when it compels the gift of a support that was not bought and paid for. Eight of the justices think that it does. Mr. Justice Brandeis disagrees. In an elaborate dissent he outlines step by step the various statutory restrictions on the use

[1] (1923) 263 U. S. 418, 44 Sup. Ct. 153.

[2] (1923) 260 U. S. 393, 43 Sup. Ct. 158.

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of land that have already been sustained and he insists that the restriction before the court may reasonably be made a link on the same chain.

Party-wall statutes were sustained in two cases on grounds of ancient custom. The one applicable to the District of Columbia allowed an owner to build a wall partly beyond his boundary line and to recover compensation from a neighbor who later makes use of it. Many of the lots in Washington had originally been sold under mutual restrictions containing this plan. From this there had developed a similar custom commonly followed in other parts of the city. On the basis of this Chief Justice Taft declared in *Walker* v. *Gish*[1] that it was reasonable to imply an agreement to allow a neighbor to straddle the boundary line and an obligation to pay him for subsequent sharing of what he had built. The case leaves open the question whether future initial construction of such a wall must be submitted to over timely protest.

The action in *Jackman* v. *Rosenbaum Co.*[2] was by the initial erector of a party wall against a neighbor for damages due to his substitution of a new party wall. The substitution was required by the authorities as a means of ensuring the safety of the new structure, though the new builder would of course have been free to erect an independent wall wholly on his own lot. He chose, however, to have a wall partly on his neighbor's land, as his neighbor had enjoyed such a wall partly on his land. His neighbor's building was a theatre and the business was not enhanced by the absence of a side wall for a few months while the substitution was in process. It appeared that the Pennsylvania statute under which all this happened was the successor of an ancient Pennsylvania custom of similar collectivistic propensities. Mr. Justice Holmes confines approval of the statute to one having such a customary progenitor. He observes that "the Fourteenth Amendment, itself a historical product, did not destroy history for the states, and substitute mechanical compartments of law, all exactly alike. If a thing

[1] (1923) 260 U. S. 447, 43 Sup. Ct. 174.

[2] (1922) 260 U. S. 22, 43 Sup. Ct. 9.

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has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it." He adds, however, that "of course, a case could be imagined where the modest mutualities of simple townspeople might become something very different when extended to buildings like those of modern New York." The present case arose in Pittsburgh.

Investigators of the art and practice of bread-making will find food for thought in the contending opinions in *Burns Baking Co.* v. *Bryan*[1] which declared unconstitutional a Nebraska statute probibiting the sale of bread which within twenty-four hours after making weighs more than two ounces to the pound in excess of the standard weights prescribed, such excess to be determined not by the individual loaf but by the average of any twenty-five selected loaves. The conceded object of the statute was to prevent loaves above any standard size from being mistaken for loaves of the next higher standard size. It was recognized by the majority that the law could readily enough be complied with by wrapping loaves to prevent evaporation, but it was thought to be "unreasonable to prevent unwrapped bread being furnished to those who want it in order technically to comply with a weight regulation and to keep within limits of tolerance so narrow as to require that ordinary evaporation be retarded by wrapping or other artificial means." Mr. Justice Butler declared that "the provision that the average weights shall not exceed the maximums fixed is not necessary for the protection of purchasers against imposition and fraud by short weights, and is not calculated to effectuate that purpose, and that it subjects bakers and sellers of bread to restrictions which are essentially unreasonable and arbitrary, and is therefore repugnant to the Fourteenth Amendment." Not so Mr. Justice Brandeis whom Mr. Justice Holmes seconded. The dissenting opinion would make a good master's thesis for submission to the department of cookery in a school of domestic science. It appears therefrom that most of the folks who have studied into the matter find the prohibition of excess weight

[1] (1924) 264 U. S. 504, 44 Sup. Ct. 412.

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essential to prevent confusion in standard sizes and find the hardship imposed on bakers to be somewhat less heavy and unreasonable than it seems to the more tender-hearted majority of the Supreme Court.

Turning from bread-making to bread-winning, we find the court sustaining statutes forbidding women to work as waitresses in restaurants between the hours of ten at night and six in the morning,[1] and statutes requiring licenses for dentists[2] and realtors.[3] Women in restaurants are allowed by New York to sing or to check coats, but this was held not to be an unreasonable discrimination against those who sought to serve by waiting on table. The would-be dentist complained because the Washington statute failed to fix the various standards which the licensing board should apply, but the discretion thus vested was found to be no broader than that previously sustained. The realtor protested against a provision authorizing the licensing board "to require and procure" proof of an applicant's qualifications to sell real estate, but the court ruled that this conferred no power to conduct a secret inquisition and it restricted the general words by the assumption that any independent investigation by the board would be accompanied or followed by "publicity and the opportunity of the applicant to meet adverse evidence."

Statutes of several states forbidding the teaching of foreign languages to children in school below the eighth grade were declared not constitutionally applicable to private schools in *Meyer* v. *Nebraska*[4] and *Bartels* v. *Iowa*.[5] The court was unanimous in invalidating the Ohio prohibition directed exclusively against German, but Justices Holmes and Sutherland dissented with regard to the other statutes that the court annulled. The former observed that he thought that he appreciated the objection to the law, but that it seemed to him "to present a ques-

[1] Radice v. New York (1924) 264 U. S. 292, 44 Sup. Ct. 325.

[2] Douglas v. Noble (1923) 261 U. S. 165, 43 Sup. Ct. 303.

[3] Bratton v. Chandler (1922) 260 U. S. 110, 43 Sup. Ct. 43.

[4] (1923) 262 U. S. 390, 43 Sup. Ct. 625.

[5] (1923) 262 U. S. 404, 43 Sup. Ct. 628.

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tion upon which men reasonably might differ" and therefore he was "unable to say that the Constitution of the United States prevents the experiment being tried." For the majority Mr. Justice McReynolds pointed out that the limitation of the statute to a few subjects shows that its purpose is not to protect the child's health by limiting his mental activities, and he laid down that although such substitution of state dictation for parental control might be approved by Plato and practiced by the Spartans, it does "violence to both letter and spirit of the Constitution."

In a series of cases the alien land laws of California and of Washington were sustained as against complaints founded on treaties and on the Fourteenth Amendment. These laws forbade aliens ineligible to citizenship to acquire interests in agricultural land by way of lease,[1] cropping contract[2] or ownership of stock in a corporation.[3] The Washington statute extended its proscriptions to aliens eligible to citizenship who had not taken out naturalization papers, while the California laws applied only to those ineligible to citizenship. These discriminations were held reasonable. The opinions of Mr. Justice Butler assert that the political menace of aliens on farms is an obvious one. They do not touch on the economic considerations which lie back of the legislation nor explain why aliens are more of a menace as owners of farm land than as owners of city lots. Previous cases holding it a violation of due process to forbid the private employment of aliens were distinguished on the ground that prohibition of an alien's use of land under a cropping contract or a lease does not deny the ordinary means of earning a livelihood or the right to work for a living. In another case the denial to an alien of a license to be a pawnbroker was held to be forbidden by the federal treaty with Japan.[4]

[1] Terrace v. Thompson (1923) 263 U. S. 197, 44 Sup. Ct. 15; Porterfield v. Webb (1923) 263 U. S. 225, 44 Sup. Ct. 21.

[2] Webb v. O'Brien (1923) 263 U. S. 313, 44 Sup. Ct. 112.

[3] Frick v. Webb (1923) 263 U. S. 326, 44 Sup. Ct. 115.

[4] Asakura v. Seattle (1924) 265 U. S. 332, 44 Sup. Ct. 515.

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Among other police measures found free from constitutional fault were ones providing for the escheat to the state of savings banks deposits after twenty years of quiescence,[1] requiring that policies of hail insurance shall take effect within twenty-four hours from the acceptance of an application by an authorized agent unless within that period notice of rejection is given to the agent and to the applicant,[2] requiring operators of motor vehicles carrying passengers for hire to give a bond or take out insurance for the protection of persons injured by their operation,[3] and confining to corporations an installment cooperative investment enterprise somewhat akin to banking.[4]

If there was doubt heretofore, there need be no doubt henceforth that a city cannot adduce provisions of the federal Constitution against action of the state legislature even when it interferes with interests which the city is enjoying in a proprietary rather than in a governmental capacity. In *Trenton* v. *New Jersey*[5] and *Newark* v. *New Jersey*[6] Mr. Justice Butler declared that this was already so well established that the federal issues raised were sufficiently frivolous to require the writs of error to be dismissed. Trenton had acquired its water system from a private company and claimed unsuccessfully that it had succeeded to that company's immunities under the contract clause. Newark objected to an alleged discrimination against it, but learned that the Fourteenth Amendment is not a shield for a city against a state. The complaints were levied against a statute which taxed diversion of water from streams and lakes in excess of stated amounts. The cases sustained the general police power of the state to conserve water supplies and Mr. Justice Butler declared that "a municipality is merely a department of the state, and the state may withhold, grant, or with-

[1] Security Savings Bank v. California (1923) 263 U. S. 282, 44 Sup. Ct. 108.

[2] National Union Fire Insurance Co. v. Wanberg (1922) 260 U. S. 71, 43 Sup. Ct. 32.

[3] Packard v. Banton (1924) 264 U. S. 140, 44 Sup. Ct. 257.

[4] Dillingham v. McLaughlin (1924) 264 U. S. 370, 44 Sup. Ct. 362.

[5] (1923) 262 U. S. 182, 43 Sup. Ct. 534.

[6] (1923) 262 U. S. 192, 43 Sup. Ct. 539.

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draw powers and privileges as it sees fit." To make assurance doubly sure he added that "however great or small its sphere of action, it remains the creature of the state, exercising and holding powers and privileges subject to the sovereign will."

Criminal proceedings by the federal government are restricted by a number of specific provisions contained in the early amendments to the Constitution. Prosecution for infamous crimes must be started by action of a grand jury. The infamy of the crime is determined by the infamy of the punishment. Imprisonment in a penetentiary is infamous, and so is imprisonment in other places if at hard labor. If, however, the hard labor is imposed, not by the court as punishment, but by jail authorities for other reasons, *Brede* v. *Powers*[1] seems to hold that the crime is not thereby rendered an infamous one. Mr. Justice McKenna's opinion is none too lucid, and Justices McReynolds and Brandeis confine their concurrence to the result.

While it may be that no man can serve two masters, it appears from *United States* v. *Lanza*[2] that a man may disobey two masters and be punished by both without relief from the Fifth Amendment's prohibition against double jeopardy. Mr. Lanza sold liquor and was punished by state authorities. For the same sales he was thereafter punished by federal authorities. This, declares Chief Justice Taft, in view of well established precedents is not making him subject for the same offense to be twice put in jeopardy of life or limb. The offense against the state was one offense; the offense against the United States was another offense. With one stone Mr. Lanza killed two birds, and for each killing he may be separately punished. After pointing out that Congress might make state punishment a bar to federal prosecution and discussing possible unwise results from so doing, the Chief Justice concludes: "But it is not for us to discuss the wisdom of legislation; it is enough for us to hold that, in the absence of special provision by Congress, conviction and punishment in a state court, under a state law,

[1] (1923) 263 U. S. 4, 44 Sup. Ct. 8.

[2] (1922) 260 U. S. 377, 43 Sup. Ct. 141.

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for making, transporting, and selling intoxicating liquors, is not a bar to a prosecution in a court of the United States, under the federal law, for the same acts."

The Fourth Amendment declares that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. The Fifth Amendment contains protection against compulsory self-incrimination. These limitations apply *ex proprio vigore* only to the actions of federal officials. The two provisions have been held by the Supreme Court to be interrelated to the extent that evidence derived from an accused by a wrongful search and seizure cannot against due objection be admitted in evidence against him. The accused is thought to be made a witness against himself when evidence unconstitutionally extracted from him is used against him. The protection of the Fourth Amendment does not extend to open fields and therefore in *Hester* v. *United States*[1] revenue officers were allowed to testify as to what they discovered when defendant dropped a jug even though the officers might have been trespassers in getting to their place of observation.

Another form of the mystical union between the Fourth and the Fifth Amendments safeguards private papers against a search warrant when the papers are sought as evidence against the accused. This does not extend to the books of corporations or of bankrupts. *Essgee Co.* v. *United States*[2] followed precedents in holding that an officer of a corporation cannot resist the production of corporate books on the ground that they contain records tending to incriminate him. So with regard to a bankrupt, Chief Justice Taft declared in *Dier* v. *Banton*[3] that "he has lost any right to object to their use as evidence because, not for the purpose of evidence, but in the due investigation of the alleged bankruptcy, and the preservation of his estate pending such investigation, the control and possession of his books and papers relating to his business were

[1] (1924) 265 U. S. 57, 44 Sup. Ct. 445.
[2] (1923) 262 U. S. 151, 43 Sup. Ct. 514.
[3] (1923) 262 U. S. 147, 43 Sup. Ct. 533.

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lawfully taken from him." The bankrupt himself, however, as we learn from *McCarthy* v. *Arndstein*,[1] retains the immunities of the solvent against being compelled to answer questions where the answer would tend to incriminate him.

In the famous Frank Case in 1915 the Supreme Court by a vote of seven to two failed to find in the allegations in the petition for habeas corpus facts sufficient to warrant the conclusion that the trial of the relator in the Georgia state court was so under the influence of mob domination that it was not in substance the trial by jury that the due-process clause of the Fourteenth Amendment is assumed to guarantee to defendants in state criminal prosecutions. In *Moore* v. *Dempsey*,[2] however, the allegations of a similar mob dominance over a trial in a state court in Arkansas were held sufficient to order the federal district court to hear the evidence on petition for a writ of habeas corpus. Justices McKenna and Van Devanter, who concurred in the Frank Case, concurred also in the Moore Case, so it is to be assumed that the facts in the latter petition are stronger than those in the former. Justices McReynolds and Sutherland, however, thought there was no distinction sufficient to warrant the entertainment of the writ. Mr. Justice Holmes who wrote the dissenting opinion in the Frank Case, wrote the majority opinion in the Moore Case. The story made out by the petition, and for technical purposes conceded by demurrer, is one of a race riot, torturing of colored witnesses, efforts at lynching, organization of a committee of white men which restrained intending lynchers with assurances that "the law would be carried out", exclusion of negroes from the jury, selection of defendants' counsel without consultation with them, failure of counsel to challenge jurors, to ask for separate trials, to call witness for the defense or to put the defendants upon the stand, crowding of the court room and the neighborhood with an adverse throng of white men, a trial of three-quarters of an hour with a verdict of guilty reached by the jury in five minutes. Further manifestation of an unjudicial

[1] (1923) 262 U. S. 355, 43 Sup. Ct. 562.

[2] (1923) 261 U. S. 86, 43 Sup. Ct. 265.

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attitude in the community was predicated on petitions and resolutions against executive pardon submitted to the governor by the Helena Rotary Club, the Lions Club of Helena and by part of the American Legion post of the community. All this combined was thought by the majority to assert a case strong enough to be listened to. The minority thought the sources of the petition so discreditable that the affirmance of the verdict by the state court should be accepted. As Mr. Justice McReynolds puts it:

> Under the disclosed circumstances, I cannot agree that the solemn adjudications by courts of a great state, which this court has refused to review, can be successfully impeached by the mere ex parte affidavits made upon information and belief of interested convicts, joined by two white men,—confessedly atrocious criminals. The fact that petitioners are poor and ignorant and black naturally arouses sympathy; but that does not release us from enforcing principles which are essential to the orderly operation of the federal system.

II. TAXATION

The taxing power of the national government is limited by the constitutional restriction that no tax or duty shall be laid on articles exported from any state. The tax involved in *Spalding & Brothers* v. *Edwards*[1] was on the sale of baseball bats and was measured by gross receipts. Hence under the precedents it was a tax on exports if the bats were exports. They were purchased in New York by a commission merchant in New York who instructed the vendors to mark the packages with the name and address of a Venezuela firm and to deliver them to a carrier for transportation to Venezuela. This was held to be in substance a single sale for export notwithstanding the fact that technically the American commission merchants were the buyers.

For a dividend to be taxable as income under the Sixteenth Amendment, it must be something other than a stock dividend. A dividend is not a stock dividend unless it is a dividend in the stock of the declaring corporation. A dividend in the stock of

[1] (1923) 262 U. S. 66, 43 Sup. Ct. 485.

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a different corporation is a dividend in stock rather than a stock dividend. Hence there arises the question whether the corporation whose stock is divided is really the same corporation as the one which does the dividing. Where a corporation created new corporations to take over some of its assets and the parent corporation distributed among its own stockholders the stock of its offspring, the parent corporation remaining in existence with its stock still outstanding, its stockholders were held to receive a dividend in the stock of a different corporation and to be taxable thereon as income.[1]

This decision was followed in *Cullinan* v. *Walker*[2] where the facts were slightly different. Here the original Texas corporation was dissolved and its assets turned over to trustees in liquidation who organized two new Texas corporations between which they divided the assets they had received from the defunct Texas corporation. From these new corporations the trustees received bonds and stock. They then organized a new Delaware corporation to which they turned over all the stock of the juvenile Texas corporations. This stock of the new Delaware holding corporation and the bonds of the two Texas corporations were then distributed pro rata among those who had been the stockholders of the earlier but now dissolved Texas corporation. Mr. Cullinan contended that the new Delaware corporation was really the old Texas corporation and that his new stock was therefore merely his old stock in another form. The court unanimously took the opposite view. Since the old stock was actually retired, the dividend was a dividend in liquidation and was not treated as income to its full value, as in the case of an ordinary dividend, but as income only to the extent that the value of the new holdings exceeded the price paid for their predecessors.

The only substantial distinction between such a situation and that involved in *Weiss* v. *Stern*[3] is that in the latter the old and

[1] For an abstract of these cases and a review of the background of the problem see POLITICAL SCIENCE QUARTERLY, vol. 37, pp. 492–494.

[2] (1923) 262 U. S. 134, 43 Sup. Ct. 495.

[3] (1924) 265 U. S. 242, 44 Sup. Ct. 490.

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the new corporation were both chartered by the same state. The new corporation took over the assets and business of the old corporation which was dissolved. Half of the stock of the new corporation went to brokers and the money paid by the brokers was distributed among the stockholders of the old corporation along with the other half of the stock of the new corporation. The question was whether the stockholders of the old corporation had sold their whole interest therein or had retained such part as was represented by the stock in the new corporation, i. e., whether the old and the new corporation were in substance identical. The court held that they were, over the dissent of Justices Holmes and Brandeis. There is nothing in the majority opinion of Mr. Justice McReynolds which is not as applicable to the three earlier cases which went the other way. The last two cases are in square conflict with each other unless they can be distinguished because of unsubstantial details in the mode of effecting the reorganizations or because of the fact that in the first case the new and the old corporation were generated by different states instead of by the same state as in the second case. These distinctions are not adverted to by Mr. Justice McReynolds.[1]

The federal income-tax act of 1921 taxes the income of American citizens even though they are domiciled abroad and all their income is derived from sources outside of the United States. This was sustained as constitutional in *Cook* v. *Tait*[2] in an opinion by Mr. Justice McKenna which added nothing substantial to its paraphrases of previous opinions sustaining an

[1] The distinction as to whether the chartering state of the new corporation is the same as that of the old or different therefrom is, however, made use of by Mr. Justice Brandeis in Marr v. United States in an opinion handed down on June 1, 1925, in which over the dissent of Justices Van Devanter, McReynolds, Sutherland and Butler, the new corporation chartered by a different state was treated as not the same as the old corporation which it succeeded. Congress no longer treats such reorganizations as producing what is called a "closed transaction" giving rise to taxable income, and it seems that the justices who have voted that they did not give rise to taxable income under the Act of 1916 have been affected by the congressional change of heart and have made unwarranted distinctions between the cases before them and earlier ones which should have been followed or else overruled.

[2] (1924) 265 U. S. 47, 44 Sup. Ct. 444. Mr. Justice McReynolds did not sit.

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excise on the use by an American citizen of a foreign-built yacht wholly outside of United States waters. Part of the paraphrasing contrasts the power of a state with the power of the United States, pointing out that the power of a state encounters at its borders the powers of a sister state and is limited by them, whereas there is no such limitation upon national power.

Two Alaska taxes on nonresidents were sustained in *Haavik* v. *Alaska Packers' Association*.[1] Mr. Haavik was in the Territory engaged in fishing for about five months. He was subjected to an annual poll tax of $5 imposed on residents as well as on nonresidents and he was made to pay also an annual license tax of $5 imposed only on nonresident fishermen. In considering the former tax Mr. Justice McReynolds pointed out that it was upon an individual actually within the territory for a profitable purpose and not merely passing through as a traveler. The discrimination against nonresidents in the license tax was condoned with the observation that it "is not wholly arbitrary or unreasonable, and we find nothing in the Constitution which prohibits Congress from favoring those who have acquired a local residence and upon whose efforts the future development of the territory must largely depend." There was no discrimination between citizens of different states and the case did not involve taxation by a state, so that the issue was not complicated by the privileges and immunities clause of the original Constitution.

An illustration of unconstitutional extraterritorial taxation by a state appears in *St. Louis Cotton Co.* v. *Arkansas*[2] which frustrated a state effort to prevent insurance companies not admitted to the state from issuing policies on property within the state. A foreign manufacturing corporation doing business in Arkansas effectuated outside of the state a contract of insurance on property within the state and resisted payment of a state tax of five per cent on the gross premiums paid by it. The state court justified the tax as a regulation of business within the state, but the Supreme Court held that it was a reg-

[1] (1924) 263 U. S. 510, 44 Sup. Ct. 177.

[2] (1922) 260 U. S. 346, 43 Sup. Ct. 125.

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ulation of business outside the state. The tax on such an extra-state act was said to be as unconstitutional as a previous unsuccessful effort of a state to forbid and punish such an extra-state act. It is to be assumed that the court would also forbid such a tax on a domiciled citizen who uses the mails to make a contract of insurance with an outside company.

A state income tax on a nonresident must in principle be confined to income derived from sources within the state. This principle was held in *Atlantic Coast Line Railroad Co.* v. *Daughton*[1] to be satisfied by a tax on the net income from railroad operations within the state although the owner and operator of the road had to pay for interest and rentals more than it received by way of operating returns. The state taxed no more income than was derived from within the state but it taxed this as income of a company that had to pay it to creditors and lessors and therefore was not itself the recipient of net income from within the state. Mr. Justice Brandeis likened the situation to a tax on the full value of land without deduction of mortgage indebtedness and declared that a state may "impose a tax upon the net income of property, as distinguished from the net income of him who owns or operates it."

While it is exceedingly doubtful whether any procedure will enable litigants to question the validity of the general purposes for which the United States appropriates money, and doubtful also whether the Supreme Court will recognize the existence of limitations on national expenditure,[2] it is settled that state taxation can be only for a public purpose. Here a distinction is drawn between enterprises undertaken by the state and enterprises in private hands which a state may propose to aid. As to the former, Chief Justice Taft declared in a recent dictum that the state may tax for any purpose in which it may engage and added that "this covers almost any private business if the legislature thinks that the state's engagement in it will help the general public, and is willing to pay the cost of the plant and

[1] (1923) 262 U. S. 413, 43 Sup. Ct. 620.

[2] See Massachusetts v. Mellon (1923) 262 U. S. 447, 43 Sup. Ct. 597, reviewed in POLITICAL SCIENCE QUARTERLY, vol. 40, pp. 109–111.

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incur the expense of operation."[1] As to the latter, a state has been forbidden to make donations to manufacturing corporations but is allowed to subsidize transportation enterprises. In *Milheim* v. *Moffat Tunnel District*[2] it was held proper to raise by special assessments on a selected district the funds necessary to build a tunnel to be used by railroads and other public utilities on a rental basis. It was recognized that the motive was to save a particular railroad from bankruptcy and to enable it to continue in more effective operation. The tunnel was, however, to be held in public ownership.

A rather more direct donation appears to have been bestowed upon the Boston Elevated Railway Company by the plan approved in *Boston* v. *Jackson*.[3] The company was the lessee of a subway owned by the city under a statute authorizing the city to retain the rents "in its private and proprietary capacity, for its own property" and not to be taken away by the Commonwealth except by eminent domain. When the company fell financially sick, it consented to an arrangement with the state whereby its lease was taken over by trustees appointed by the state, any deficit in operations to be met by the state which would reimburse itself by assessments on the towns served by the lines. During the first year the trustees charged over $5,000,000 for depreciation, maintenance and repairs, although the company had not been spending more than $100,000 a year for these purposes. The deficit for the year was $4,000,000 which the state paid and assessed against the municipalities. Boston sought to enjoin the assessment against it, but did not succeed.

Complaints that special taxes on selected forms of enterprise are denials of equal protection of the laws for failure to apply to other forms of enterprise or to enterprise generally are seldom recognized as valid. The state is not obliged to tax everything in order to tax something. Only egregious whimsicality seems to support a lament under the equal-protection clause.

[1] Wolff Packing Co. v. Industrial Court (1923) 262 U. S. 522, 537, 43 Sup. Ct. 630.

[2] (1923) 262 U. S. 710, 43 Sup. Ct. 694.

[3] (1922) 260 U. S. 309, 43 Sup. Ct. 129.

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None such appeared to the court in taxes on anthracite coal but not on bituminous,[1] on extracting ore[2] or severing skins from fur-bearing wild animals[3] but not on other functions of sejunction. These were all taxes to take toll on natural products largely destined for other states, but they were held immune from criticism under the commerce clause as well as the equal protection clause. The broker who complained in *Raley & Brothers* v. *Richardson*[4] because a $100 license tax applied only to those engaged in local commerce was told by Mr. Justice Sutherland that "it would be a strange application of the equality provision of the Fourteenth Amendment to say that because a state is forbidden by paramount law to impose a tax upon some merchants, it is therefore powerless to impose it upon other merchants to whom the restriction does not apply."

Special assessments have of late been bringing numerous complaints to the Supreme Court and now and then an apportionment is found so grossly unfair that it is set aside. The same method may be held proper for one situation and improper for another. Thus an apportionment on the basis of the assessed value of lands and improvements was held proper for a sewer district in *Valley Farms Co.* v. *Westchester County*, but improper for a drainage and levee district in *Thomas* v. *Kansas City Southern Railway Co.*[6] The sewer district was so large that the so-called special assessment hardly differed from a general property tax. In the drainage case, 12,000 acres of farm land which would be greatly enhanced in value by the improvement were assessed for 43 per cent of the cost, while the remaining 57 per cent was put on a railroad which owned forty acres and had three and a half miles of track. Obviously the road would profit only as the lands were improved and even then the benefit to the road would be indirect while that to the farms would be direct.

[1] Heisler v. Thomas Colliery Co. (1922) 260 U. S. 245, 43 Sup. Ct. 83.

[2] Oliver Iron Mining Co. v. Lord (1923) 262 U. S. 172, 43 Sup. Ct. 526.

[3] Lacoste v. Department of Conservation (1924) 263 U. S. 545, 44 Sup. Ct. 186.

[4] (1924) 264 U. S. 157, 44 Sup. Ct. 256.

[5] (1923) 261 U. S. 155, 43 Sup. Ct. 261.

[6] (1923) 261 U. S. 481, 43 Sup. Ct. 440.

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On the other hand in *Durham Public Service Co.* v. *Durham*[1] a street railroad with two and one-half miles of track worth about $100,000 had to pay over $100,000 for paving the part of the street between and near its tracks, while 154 owners of abutting property worth about $5,000,000 paid less than $90,000 for paving the rest of the street. The statute required the road to pave its part of the street, and the imposition of this duty has been sustained as a proper exercise of the police power. The case might have been put on this ground instead of on the ground of special assessments. Whatever the justification, the result still seems a pretty harsh one. It is in effect an indirect way of getting a high rent for the use of the streets.

III. Eminent Domain

The constitutional provision that private property shall not be taken for public use, without just compensation, has been judicially endowed with the negative pregnant that it shall not be taken for private use, even upon payment of compensation. This restriction against taking for a private use is incorporated in the conception of the due-process requirement of the Fourteenth Amendment and is applied, therefore, to the state as well as to the national government. Takings by the national government were held in two cases to be for public uses. *Manufacturers' Land Co.* v. *United States Shipping Board*[2] involved a taking of land for an electric railway terminal for the convenience of employees of the Fleet Corporation. *Brown* v. *United States*[3] sanctioned a taking of land for a town site to be exchanged for a tract taken for a reservoir for an irrigation project. A taking under state authority for a highway was sustained in *Rindge Company* v. *Los Angeles County*,[4] though the main object of its construction seemed to be to create an opportunity for beholding the beauties of Southern California coastal nature.

[1] (1923) 261 U. S. 149, 43 Sup. Ct. 290.
[2] (1924) 264 U. S. 250, 44 Sup. Ct. 314.
[3] (1923) 263 U. S. 78, 44 Sup. Ct. 92.
[4] (1923) 262 U. S. 700, 43 Sup. Ct. 689.

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Canons of the law of eminent domain play a part in determining whether a contract is to be implied from actions of the federal government so that a suit may be brought against it in the Court of Claims. Where what has happened seems to the court to be in the nature of a taking of property by the government, there is a strong likelihood that the judges will discover what they call an implied promise on the part of the government to render compensation therefor. Illustrations of this tendency and of its limitations are afforded by the contrast between cases disallowing any action for an injury to a pier by reason of government blasting in the bed of a river[1] or for occasional overflowing of land as a result of construction of public works[2] and *Portsmouth Harbor Co.* v. *United States*[3] which held that an implied contract might arise from repeated firing over a neighbor's land. This decision followed two earlier ones which had disallowed any remedy against the government. It arose on demurrer and therefore the pleaded fact that the acts complained of were those of the United States itself was assumed to be true. The acts included the recent erection of heavy guns so placed as to be capable of being fired only over complainant's land and the establishment on his land of a fire control station. There was also occasional firing which the majority thought might be evidence of a continuing purpose to fire, in view of the past history of the enterprise and the litigation over it. The decision does not go any farther than that the plaintiff states enough to entitle him to go ahead with his proof. A dissenting opinion by Mr. Justice Brandeis, concurred in by Mr. Justice Sutherland, proceeds upon somewhat technical grounds and recognizes the possibility of substantive liability when it says: "I agree that, in time of peace, the United States has not the unlimited right to shoot from a battery over adjoining private property, even if no physical damage is done to it thereby; that a single shot so fired, may, in con-

[1] Keokuk & Hamilton Bridge Co. v. United States (1922) 260 U. S. 125, 43 Sup. Ct. 37.

[2] Sanguinetti v. United States (1924) 264 U. S. 146, 44 Sup. Ct. 264.

[3] (1922) 260 U. S. 135, 43 Sup. Ct. 327.

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nection with other conceivable facts, justify a court in finding that the government took, by eminent domain, the land or an easement therein; and that such taking, if made under circumstances which give rise to a contract implied in fact to pay compensation, will entitle the owner to sue in the court of claims."

Cases arising under purported exercises of police power sometimes throw light on the test of whether there has been such a taking as to require just compensation under principles of eminent domain. In declaring in *Pennsylvania Coal Co.* v. *Mahon*[1] that it is not a proper exercise of police power to forbid owners of the subsurface to cause a subsidence of the surface where the grantee of the surface had by his deed no right to support and had agreed that the sub-surface owner should not be liable for subsidence, Mr. Justice Holmes recognized that this attempted taking of the sub-surface owner's reserved powers might be authorized by eminent domain and payment of compensation. With such a case may be contrasted the decisions giving neighbors power to build party walls athwart the boundary line,[2] and the cases under the Transportation Act which sustained the somewhat eleemosynary division of earnings from a haul over connecting lines[3] and the recapture of excess earnings.[4]

Various complaints against a municipal taking of land for a reservoir were left without solace in *Joslin Manufacturing Co.* v. *Providence*.[5] The city was required to allow neighboring municipalities in the watershed to share in the supply upon payment of wholesale rates. This was approved against the complaint that it taxed the inhabitants of one town for the benefit of those of another. The scheme of compensation gave

[1] (1922) 260 U. S. 393, 43 Sup. Ct. 158, *supra*, page 417.

[2] Walker v. Gish (1923) 260 U. S. 447, 43 Sup. Ct. 174, *supra*, page 418. Jackman v. Rosenbaum Co. (1922) 260 U. S. 22, 43 Sup. Ct. 9, *supra*, page 418.

[3] New England Divisions Case (1923) 261 U. S. 184, 43 Sup. Ct. 270, *supra*, page 406.

[4] Dayton-Goose Creek Railway Co. v. United States (1924) 263 U. S. 456, 44 Sup. Ct. 169, *supra*, page 406.

[5] (1923) 262 U. S. 668, 44 Sup. Ct. 684.

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payment for injury to business established before the statute but not for injury to business established thereafter. It paid the cost of removing machinery to other locations in the New England states but not beyond. The two restrictions were sanctioned as not a denial of equal protection, since the payments were favors and not constitutional requirements and the limitations were not without reason. The grants of the favors were approved as against a taxpayer's complaint. The state is allowed to do a decent thing even if not constitutionally commanded to do so. Settled principles were reaffirmed in the rulings that the state need not pay before it takes if payment is pledged and there is adequate provision for compelling performance, and that the court will not review the legislative determination of the necessity for the taking.

IV. CONCLUSION

The foregoing catalog shows that constitutional claims to protection of property and liberty from the assaults of legislative power are urged more often in vain than with success. The Constitution is far from being the shield that litigants or their lawyers would have it. The few successful reliances on the liberty and property clauses of the Constitution among the cases here reviewed may be briefly recited. Stockholders have been protected from a federal income tax on a dividend in the stock of a corporation regarded as substantially the same as the corporation declaring the dividend. Baseball bats sold in substance for foreign delivery have been protected from a federal tax on their sale price. A railroad has been protected from an excessive state assessment for a drainage improvement. An insurer has been protected from a state tax on effecting a policy outside the state on property within the state. A hotel has been given a chance to prove that the United States has in effect taken an easement over it for the passage of projectiles and for which, therefore, it must pay. One convicted in a state court has been given a chance to prove that the trial was so under the influence of mob domination as to be substantially *coram non judice*. A bankrupt has been protected from giving testimony that might tend to incriminate him. Bakers have

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been protected from compulsion to keep their loaves down close to prescribed standard weights. Railroads have been protected from rate reductions judicially deemed excessive. Owners of coal in the ground have been protected from compulsion to play Atlas when they had reserved the right to refrain. Foreign languages have been protected from expulsion from private schools. Employers and employees have been protected from having their disputes over wages settled by public authorities. Women who work have been protected from compulsion to contract for at least a living wage.

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COMMUNISM DURING THE FRENCH REVOLUTION, 1789–1793

COMMUNISM as it is now understood had no prevalence during the French Revolution, for the various aspects of modern socialism are reactions to modern industrial conditions. But although the word *socialism* was itself not used until 1832,[1] the newly cherished movement was the culmination of a long tradition of striving for social justice, of which certain phases of the French Revolution were only recent manifestations. The seekers after social justice during the French Revolution went back in this tradition as far as the Roman Revolution for their prototypes. Plutarch, of course, must bear a large share of the responsibility of the French Revolution,[2] and certainly it is not without significance that Babeuf, the greatest socialist of the French Revolution, renounced his Christian name of François Noel for that of Gracchus and called his journal *Le Tribun du peuple*.[3] For had not Plutarch described how the tribune Tiberius Gracchus in 133 B. C. had tried, by appealing to the old Licinian law, to bring about a more equal distribution of the *ager publicus*? It was with this Plutarchian precedent in mind that contemporaries of Babeuf referred to the most radical of current social programs as the agrarian law (*la loi agraire*), a communistic plan in the sense that the advocates of it preached some kind of equal distribution of landed property.

In the years 1789–1793 there was considerable anxiety over the agrarian law, most of which was concerned with a bugaboo that nervous property owners had themselves created and then attempted to destroy. Some of it, however, was more than mere hallucination. It was inevitable, as the Abbé Maury had

[1] Oxford Dictionary, vol. IX, pt. 1, p. 358.

[2] Cf. Madelin, *Révolution française*, 8th ed. 1922, p. 26.

[3] Philips in *Encyclopedia Britannica*, article, "Babeuf".

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intimated on October 13, 1789,[1] that the example of confiscation set by the state should find an echo in the hearts of radicals bent upon a still wider confiscation. The most serious writings in favor of the agrarian law were by more or less obscure and indiscreet gentlemen who failed to realize that not all of the philosophy of the eighteenth century, certainly not all of Rousseau, was in good taste in middle-class politics. In 1791 there appeared the Abbé de Cournand's *De la Propriété, etc.*,[2] and an anonymous brochure *Ce que c'est que la constitution* presenting "the best possible law for the happiness of all men and women."[3] In 1791 also the still obscure Babeuf wrote to Coupé de l'Oise, member of the Legislative Assembly, urging him to advocate the agrarian law;[4] this letter, however, was not published until long afterwards. In 1792 appeared the second edition of Boissel's *Catéchisme du genre humain*,[5] first published in 1789; and in 1793 came Dolivier's *Essai sur la justice primitive*[6] and a tract by one Lange,[7] known to us only through some bibliographical notes. All of these works, to mention no others, advocated some kind of redistribution of property. How popular they became there is no definite way of judging, but since both the authors and the books were mentioned only rarely by even those of their contemporaries most piously worried about the sacredness of property and have since remained obscure, it is hardly likely that their influence was ever very marked.

To these few tracts alone was limited all frank and earnest agitation for the agrarian law. There were radical economic proposals made in some of the newspapers, but they always fell

[1] Quoted in Lichtenberger, *Le Socialisme et la Révolution française*, p. 64.

[2] Jaurès, *Histoire socialiste, La Convention*, pp. 1534-1537; Lichtenberger, p. 85; Aulard, *French Revolution*, vol. I, pp. 228-229.

[3] Lichtenberger, pp. 86-87.

[4] Espinas, *Philosophie sociale du XVIII siècle et la Révolution*, pp. 403-412; Jaurès, pp. 1438-1545.

[5] Ogg, *Economic Development of Europe*, p. 488; Jaurès, p. 1552.

[6] Jaurès, pp. 1646-1658.

[7] *Ibid.*, pp. 1658-1659; Levasseur, *Histoire des classes ouvrières de 1789 à 1870*, vol. I, p. 79.

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short of the agrarian law. No. 159 of Marat's *Ami du peuple*[1] is regarded[2] as having begun the discussion of the agrarian law by its attacks upon wealth, but, as we shall see, Marat was as severe as any other in his denunciations of the agrarian law. Likewise, Fauchet's *Bouche de Fer* once claimed that "every man has a right to land"[3] and yet the *Cercle Sociale* of which it was the official organ was guilty of nothing more than idle, idealistic speculation.[4] Seemingly more earnest in support of the agrarian law was Prudhomme's *Révolutions de Paris*, in which an editorial entitled "*Des Pauvres et des riches*"[5] has often been blamed for championing the agrarian law.[6] Nevertheless, the author of the article definitely asserted that the true friend of the poor would not urge the rich to yield to the agrarian law;[7] all he advocated was that each rich family should give part of its wealth to a poor one.[8] If, in bitter reply to bitter criticism, later numbers of the journal seemed to show sympathy with the exponents of the agrarian law[9] (Robert, for example, in no. 96 insisted that the Revolution was itself an agrarian law and that with one step more the people would reenter upon their possessions),[10] still, when in March, 1793, it was declared a capital offense to preach the agrarian law, Prudhomme's only adverse comment was that the Convention should have taken such a measure at the very beginning.[11] For a moment it had looked as if even that bourgeois spirit Rabaut St. Étienne might have been guilty of preaching the agrarian law in the *Chronique de Paris*, but, reduced to its simplest

[1] June 30, 1790, p. 7.

[2] Aulard, *Études et Leçons*, vol. IV, p. 27.

[3] Aulard, vol. I, p. 230; *cf. Bouche de Fer*, no. 22, November 22, 1790, quoted in Lichtenberger, pp. 69-70.

[4] *Infra*, p. 441.

[5] No. 82, Jan. 29-Feb. 5, 1791.

[6] Lichtenberger, pp. 85-88.

[7] *Révolutions de Paris*, vol. VII, no. 82, p. 172.

[8] *Ibid.*, pp. 169-175.

[9] Lichtenberger, pp. 89-90.

[10] Quoted in Kropotkin, *Great French Revolution*, p. 242.

[11] *Révolutions de Paris*, no. 193, March 16-23, 1793, pp. 517-524.

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terms, his scheme was merely to limit the wealth of any one individual to a specified maximum, the excess to go to the state [1] —a radical enough proposition but yet not the agrarian law. How little of a radical Rabaut St. Étienne really was was shown by his subsequent horror at the extreme doctrines of the Paris deputies.[2] Even the most radical of all the Jacobin journals—Hébert's *Le Père Duchesne*—admitted that "it was impossible to establish perfect equality of wealth",[3] although it attacked what it pleased to call "all the rich swine" time and again.[4] The radicalism of some of the newspapers was undeniable, but not one of them actually preached an equal distribution of land, and under menacing cross-examination, almost all of them failed to show the courage of their convictions.

The same holds true for the various radical clubs. The patriotic society that might most reasonably have been suspected of advocating the agrarian law was the *Société des Amis de la Vérité*, better known as the *Cercle Sociale*. The Abbé Fauchet, its leader, and his journal, the *Bouche de Fer*, were frequently accused of it and as frequently denied it. Actually Fauchet's fundamental doctrine was the limitation of landed wealth to a maximum, no limit to be set upon personal property; he even called the agrarian law "the last measure of folly".[5] Lichtenberger maintains indeed that the entire *Cercle Sociale* were "theoreticians much more than political and social reformers".[6] Another group that has been charged with preaching the *loi agraire*[7] was the so-called *Enragés*, led by the ex-priest Jacques Roux and made up of the most radical elements of Paris. Yet nothing can be found in Roux's speeches or in the papers of Roux and his colleagues, one of whom at least was too radical even for him,[8] that may be re-

[1] Levasseur, p. 81; Aulard, vol. III, p. 126.

[2] Jaurès, p. 1546.

[3] No. 198, December 1792, quoted by Aulard, vol. III, pp. 128-129.

[4] Nos. 223, 243, 244.

[5] Lichtenberger, p. 73. [6] *Ibid.*, p. 75.

[7] Michelet, *La Révolution française*, vol. VI, pp. 23-30.

[8] Varlet; see Mathiez, *Vote du premier maximum*, in *Annales Révolutionnaires*, 1919, vol. XI, p. 303.

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garded as a plea for communism. The attention of the *Enragés* was fixed rather upon the restriction of the profiteer and the speculator. Though there were some statements savoring of socialism in their speeches and writings that are still available, the institution of private property was, on the whole, respected.[1] The attacks of Marat and Robespierre which led to the expulsion of the *Enragés* from the Jacobin and Cordeliers Clubs and eventually to their execution accused them of many heinous offenses, but never of that of supporting the agrarian law.[2] Both the Jacobin Club and the Cordeliers Club were themselves not free from the accusation of sympathizing with the communists. Of the Cordeliers' meetings there were no careful minutes kept and no complete history has been written. We simply have the facts that Danton until 1793 was their leader and that in 1793 they expelled the *Enragés*, as indications of their general attitude on economic questions; the presumption is that they were not inclined toward communism. As for the Jacobins, we have La Harpe's testimony[3] that he had been present when a speaker in favor of the *loi agraire* was hooted at one of their meetings. Furthermore, at what seems to have been their only session at which the phrase *loi agraire* was uttered, the speaker made it clear that he was not proposing anything so radical.[4] On a previous occasion an indirect reference was made to it only to indicate that the entire notion was too ideal for the French people.[5] All the other

[1] The best study of the *Enragés* is in Mathiez's series of articles in the *Annales Révolutionnaires: Les Enragés et la lutte pour le Maximum* in 1917, vol. IX; *Le Vote du premier maximum* in 1919, vol. XI; *Les Enragés contre la Constitution de 1793* in 1921, vol. XIII; *Les Enragés et les troubles du savon, ibid.; La Mort de Marat et le vote sur l'accaparement, ibid.* See also *Annales Révolutionnaires,* vol. VII, 1914, pp. 556-560; vol. VIII, 1916, pp. 530-541; Michelet, vol. V, pp. 66-70; vol. VI, pp. 58-66; vol. VII, pp. 67-70; Aulard, vol. III, p. 132; *Archives parlementaires,* vol. LXVII, pp. 457-460.

[2] Mathiez, *Les Enragés contre la Constitution de 1793* in *Annales Révolutionnaires,* vol. XIII, 1821; *Archives parlementaires,* vol. LXVII, p. 459; *Publiciste de la République française,* no. 233, July 4, 1793, pp. 1-5.

[3] *Mercure de France,* April 23, 1791, quoted in Lichtenberger, p. 163.

[4] Aulard, *Societé des Jacobins,* vol. V, pp. 226-227.

[5] Chabot quoted in Espinas, p. 152.

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societies that existed between 1789 and 1793 were too conservative to come under even a shadow of suspicion for advocating anything as revolutionary as an agrarian law.

There is no ground, then, for believing that either the newspapers or the societies favored communism. There is little more reason for considering as supporters of the agrarian law any other organizations that have sometimes been so accused, or, for that matter, any other individuals with the exception of the few communistic pamphleteers already considered. Two representatives of the Executive Council, Momoro and Dufour, sent in August, 1792, into the departments surrounding Paris to raise volunteers for the army, issued a manifesto in which they announced that the nation assured "the inviolability of what is falsely called landed property [only] until such a time as it shall have established laws dealing with this subject."[1] This manifesto met with several popular demonstrations of protest in the departments and was denounced by the Paris press[2] and in the Convention[3] as a proposal of the agrarian law. Momoro and Dufour were finally recalled by the Executive Council. Yet obviously a statement that property would be guaranteed only until some vague future time was not a dangerous sort of communism; the tumult it occasioned argues rather the intensity of the feelings of property owners than the violence of the manifesto. Likewise, in September, 1792, Robespierre was called upon to protest against a rumor that the agrarian law had been preached at the Electoral Assembly of the Paris Commune[4]—a charge which Aulard stamps as utterly without proof.[5] Among all the suspects, it was inevitable that the *émigrés* should be included. Barère felt or pretended to feel that the nobility saw in the agitation for the agrarian law a chance to separate the propertied classes from the lower classes and thereby create a dissatisfaction with the Revolution which

[1] Quoted in Aulard, vol. II, p. 132.

[2] *Ibid.*, pp. 132-133.

[3] *Ibid.*, and *Archives parlementaires*, vol. LIII, November 26, 1792, p. 600.

[4] *Moniteur*, September 26, 1792, cited in Lichtenberger, p. 95.

[5] Aulard, vol. II, p. 134.

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would redound to their benefit.[1] Corroboration of this is entirely lacking, however; in fact, Mallet du Pan, one of the most active agents of the *émigrés*, seems to have been as much perturbed by the agrarian law as any patriotic bourgeois landowner in France.[2] The charge has also been made against the *émigrés* that while they did not advocate the agrarian law themselves, yet, in order to create a rift in the patriotic ranks, they did want it generally believed that influential elements in the republican government were doing so.[3] This assumption seems logical enough, but it must be noted that it is difficult to find any literature to substantiate it. The chief reason there is to believe it at all is the conviction with which it was made—which is not reason enough.[4]

If then practically all who have been accused of preaching the agrarian law did not do so, how can we explain the tremendous anxiety with regard to the communists that undoubtedly did exist in 1789–93? Aulard is inclined to think that there must have been a good deal of "mouth-to-mouth socialistic propaganda . . . of which no written trace remains."[5] It seems hardly likely, however, that, if there was thus disseminated about the agrarian law enough propaganda to create the apprehension that existed in 1793, it would not have gotten into the newspapers and pamphlets. The answer to the problem seems to lie largely in this: that property owners and their adherents, fearful of all attacks upon property, did not draw the sometimes fine but always necessary distinction between preachers of the agrarian law and advocates of less ardent kinds of social legislation, and referred to any sort of socialistic scheme as the agrarian law, just as now radicals of all descrip-

[1] *Archives parlementaires,* vol. LX, March 18, 1793, pp. 292-293.

[2] *Mercure de France,* cited in Kropotkin, p. 242, and *Memoires et Correspondance,* vol. II, pp. 15 *et seq.,* quoted in Lichtenberger, p. 130, note.

[3] Aulard, vol. LI, pp. 134-135.

[4] The passage in the *Mercure de France* cited in note 2 may be regarded as having such a motive, but it may also be entirely sincere. In it Mallet du Pan demands a coalition of landowners against the brigands who preach the agrarian law.

[5] Aulard, p. 134.

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tions are likely to find themselves accused of Bolshevism, although the number of actual Bolsheviks is relatively small. The extent of the fear of communism, it would seem, is as much a measure of the sacredness with which property is endowed by its owners as it is of the vigor of the attacks upon it.

Whatever the explanation for the existence of this bourgeois "Great Fear" may be, it was intensified by the fact that the two leading parties soon tried to make capital of it. Both the Girondins and the Jacobins very early began to accuse each other of advocating the agrarian law and each emphatically denied the charge. If Marat had written a socialistic book before the Revolution, so had Brissot.[1] If St. Just, Marat and Billaud Varennes had recently attacked the wealthy in words that could be exaggerated into advocacy of the agrarian law,[2] so had Rabaut St. Étienne and Penières of the Girondins as well as Harmand de la Meusè of the Plain.[3] If Vergniaud had more than once declared his complete opposition to the agrarian law, so had Robespierre.[4] If Brissot had attacked the *loi*

[1] Marat, *Plan de législation criminelle;* Brissot, *Recherches philosophiques sur le droit de propriété et le vol.*

[2] St. Just in various passages collected in *Fragments des Institutions républicaines,* first published in 1800; see also Guthrie, *Socialism before the French Revolution,* pp. 297-300; Marat in *Ami du Peuple,* June 30, 1790, no. 149, pp. 7-8; see also Aulard, *Études et Leçons,* vol. IV, p. 27; Billaud Varennes in *Eléments de Républicanisme* (February 1793); see also Jaurès, pp. 1502-1512.

[3] Rabaut St. Étienne in *Chronique de Paris* in January 1793; see also *supra,* p. 441; Penières in *Un Plan et projet de constitution pour la République française,* quoted in Jaurès, p. 1491. Jaurès by error makes Penières say that he had heard the agrarian law proposed in the Convention itself (*ici-même*) but see *Archives parlementaires,* vol. LXII, April 16, 1793, p. 477, which reads *moi-même.* For Harmand de la Meuse see *Quelques Idées sur les premiers éléments du nouveau contrat social des Français* quoted in Jaurès, pp. 1493-1500; see also *Archives parlementaires,* vol. LXII, April 17, 1793, pp. 270-276.

[4] Vergniaud in *Archives parlementaires,* vol. LXI, April 10, 1793, p. 517; vol. LXIV, May 8, 1793, p. 332; Robespierre quoted on several different occasions in Lichtenberger, pp. 94-96 and 105-106; Aulard, vol. I, p. 230; Sudre, *Histoire du Communisme,* pp. 262-263; see also *Archives parlementaires,* vol. LXII, April 24, 1793, p. 197.

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agraire in his journal, so had Desmoulins.[1] Marat, sometimes painted as the "fiercest fanatic of the agrarian law",[2] denied the charge vehemently both on the floor of the Convention and in his journal, and it was denied in his behalf at the Club of the Jacobins.[3] In this connection, at any rate, we must accept Professor Aulard's contention that there was no profound difference between the political philosophies of the Girondins and the Jacobins.[4]

To those who witnessed these mutual recriminations, it must gradually have become apparent that the high feeling that centered about the agrarian law might become a means of drawing the Girondins and Jacobins together. The minutes of the meeting of September 21, 1792, report unanimous applause when Danton proposed that "all real, personal and industrial property be eternally maintained" and unanimous applause when Lasource supported him.[5] The Convention decreed that persons and property were under the safeguard of the nation.[6] It is significant that Lasource was a Girondin and that Danton was at this time endeavoring to effect a reconciliation of both parties. On February 26, 1793, after a bread riot on the

[1] Brissot's *Patriote français,* September 25, 1792 and *À mes Comettants,* no. 35, 1793, cited in Lichtenberger, p. 94; Desmoulins in *France libre,* July 1789, and in *Révolutions de France et de Brabant,* no. 54, cited respectively in Aulard, vol. I, p. 162-163 and Lichtenberger, p. 71.

[2] Barère's *Mémoires,* vol. II, p. 46, cited in Lichtenberger, p. 103.

[3] *Archives parlementaires,* vol. LIX, February 26, 1793, p. 275 and *Profession de Foi,* March 30, 1793, p. 7; Chabot (Sepember 7, 1792) quoted in Espinas, p. 152.

[4] Since this paper was written, the author has learned that Professor Mathiez who has long questioned Professor Aulard's theory in this respect, has ably advanced his argument that the issue between the Girondins and Jacobins was that of the champions of the middle class against the champions of the lower classes in an article entitled *De la véritable nature de l'opposition entre les Girondins et les Montagnards* in *Annales Révolutionnaires,* vol. XV, 1923, pp. 177-197. Mathiez, however, also maintains that the Jacobins no more than the Girondins were in favor of the agrarian law; see his third lecture on the Convention entitled *La campagne électorale: la question politique et la question sociale* in the *Revue des Cours et Conférences,* vol. 24, 2nd series, 1923, pp. 1198-9.

[5] *Archives parlementaires,* vol. LII, September 21, 1792, p. 171.

[6] *Ibid.,* p. 72.

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previous day, the matter came up again, but was confounded with an attack upon Marat.[1] On February 28, in order to promote the sale of public lands, Cambon, who had so far committed himself definitely to neither the Mountain nor the Girondins, suggested a very similar law to that already passed on September 21, 1792, and was supported by Barbaroux and Buzot, Girondins, among others. The Committee of Legislation was ordered to present a law punishing persons who, directly or indirectly, attacked property.[2] These sessions must have assured any one interested in bringing about the cooperation of the parties in the Convention that it could be done, as Danton had tried to do it, on the plea for the necessity of presenting a united front against the preachers of the agrarian law.

Chief of those who in March, 1793, were attempting to bring the Girondins and Jacobins together was Barère, leader of the Plain and spokesman of the Committee of General Defense. He had probably thought the matter over carefully before March 18, 1793, but on that day his chance came. Léonard Bourdon, deputy on mission, had heen attacked at Orléans on March 16 and had been saved from assassination only by the timely interference of a courageous officer of the National Guard.[3] On March 18, when official news of the attempted assassination horrified the Convention, it was decreed, practically without discussion, that the Committee on General Defense should report on the matter at the same meeting.[4] The Committee of General Defense and General Security had already discussed the event at a meeting lasting from the evening of the previous day until three o'clock that morning[5] and

[1] *Ibid.*, vol. LIX, February 26, 1793, pp. 275 *et seq.*

[2] *Ibid.*, February 28, 1793, pp. 339-345; Lichtenberger in his essay on "Le Socialisme et la Révolution française" contained in Faguet, *L'Oeuvre sociale de la Révolution française*, p. 71, states that a definite law placing property under the safeguard of the nation was passed. Such a law was proposed by Buzot, but the Convention passed to the order of the day without reaching any definite decision.

[3] Aulard, *Actes du Comité de Salut public*, vol. II, pp. 376-377, 382-384, and 389.

[4] *Archives parlementaires*, vol. LX, March 18, 1793, pp. 270-272.

[5] Barère in *ibid.*, p. 290. Aulard, *Actes du Comité de Salut public* does not have any record of this meeting.

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were presently ready to render a report. Barère delivered it. His speech was a long one, but he was concerned with Bourdon's narrow escape only to the extent of one paragraph of comment.[1] He then went into a longer discussion of the dissensions between the two extreme parties in the Convention, urging them to act together,[2] and pointed out that one of the chief causes of anxiety in France was the attacks upon property. Those mostly responsible for these attacks, he said, were the priests and the nobles.[3] (Can it be that he really thought so, or that in attributing the agitation to them he hoped to find a scapegoat that would be acceptable to both Girondins and Jacobins?) He declared that it was necessary that some definite action be taken with regard to them. If he had believed the advocates of the agrarian law to be sane, he would have proposed capital punishment for them. He proposed the penalty. . . . He never finished the sentence. Doubtless he had intended to suggest some lesser punishment than death, for quite evidently he did not take the agrarian law as seriously as some of his colleagues. He was interrupted, however, by cries of "The penalty of death!" begun on the Left and taken up by the entire assembly. Barère yielded gracefully and proposed the penalty of death.[4] It was obvious that even then Barère did not intend to initiate a sweeping or Draconic law, but a series of amendments followed his motion until the decree finally provided for "the penalty of death against whoever shall propose an agrarian law or any other law subversive of territorial, commercial and industrial property."[5] In order to

[1] *Archives parlementaires,* vol. LX, March 18, 1793, p. 290.

[2] *Ibid.,* pp. 291-292.

[3] *Ibid.,* p. 292. It has already been shown that this probably was not so. *Supra,* pp. 443-444.

[4] *Ibid.* All the newspapers consulted on the proceedings of this day failed to point out this significant fact except the *Moniteur,* March 20, 1793, and *Thermomètre du Jour,* March 19, 1793, no. 444, p. 648. Marat alone interjected a cry of caution: *"Point de décret d'enthousiasme!"*

[5] *Ibid.* It is interesting to note that Levasseur, who proposed the chief amendment, recognized the vagueness of the term *loi agraire:* "the agrarian law was for the Romans the sharing of conquered territory; here it is a question not of that but of the sharing of wealth."

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show that the Convention was interested in social questions, nevertheless, the rest of the meeting was devoted to a favorable discussion of public charity, a progressive income tax, further distribution of the property of *émigrés* in small lots, and other radical measures[1] — a program which itself, paradoxically enough, smacked of Gracchian communism. Léonard Bourdon and his wounds had been entirely lost sight of in the desire to punish attacks upon property and to kill the agrarian law by kindness. On the next day Marat's journal also came out with a plea for conciliation.[2] And on March 29, 1793, with little opposition, a supplementary decree was passed providing that those "who by their writing provoke murder and the violation of property shall be punished (1) by death when crimes shall have followed the provocation, (2) by six years' imprisonment when no crime shall have followed it."[3]

These laws neither united the parties nor produced any change whatsoever in the extent of socialistic agitation. In the Convention, at the Jacobins, in pamphlets and in the newspapers, the attacks upon wealth continued in much the same way as they had before.[4] The only difference was that now

[1] *Ibid.*, pp. 292-294. Jaurès, pp. 1548-1550, is, as far as I know, the only historian who paid any considerable amount of attention to this debate and he simply quotes it at length with very little comment.

[2] *Publiciste de la République*, no. 147, March 19, 1793.

[3] This decree was reported in the *Bulletin de la Convention nationale, Séance du Dimanche, 31 Mars 1793* and therefore some historians have dated the decree as of that date. *Cf.* Lichtenberger's essay in Faguet, p. 71. See, however, *Archives parlementaires*, vol. LX, March 29, 1793, p. 700; the *Moniteur* reports the debate in the same way but gives the decree a different wording; see also *Journal de Perlet*, no. 190, March 30, 1793.

[4] Prudhomme's *Révolutions de Paris*, no. 193, March 16-23, 1793, pp. 517-524 in reporting the law of March 18 seemed to be in favor of it, but proposed a law setting a maximum and a minimum to fortunes. Dolivier's and Lange's brochures came out after March 18, 1793; see above, p. 2. L'Huillier, procuror-general-syndic of the Department of Paris, said that "the fruits of the earth like the air belong to all men" in a petition to the Convention on April 18, 1793; see *Archives parlementaires*, vol. LXII, pp. 620-621. On June 3, 1793 Chabot at the Jacobins proposed restricting wealth to 100,000 livres; see Aulard, *Jacobins*, vol. V, pp. 226-227. In 1795 an anonymous brochure was submitted to the Committee of Agriculture proposing community of land and community of industry, but the Committee dismissed it simply with the statement "*Bonnes intentions mais beaux rêves*"; see Lichtenberger, *Un projet communiste en 1795* in *La Révolution française*, vol. XXIX, 1895, pp. 488-496.

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the writers and speakers were more careful to announce that they were not preaching the agrarian law and to point out the distinctions between it and their own proposals.[1] Even the isolated cases after March, 1793, in which the agrarian law was seriously advanced were given no more attention than they might have received previously. The way was gradually being prepared for Babeuf. But until 1796 the fear of the agrarian law was as Robespierre called it, only a "phantom . . . to frighten imbeciles."[2] That it met with so much serious attention even in the Convention was due in part to a loose usage of the phrase *loi agraire* to include all attacks upon property and in part to a hope in some quarters that in order to protect property the opposing factions in the Convention might be induced to unite. If the communist movement had ever become truly powerful, perhaps the final struggle between the Mountain and the Gironde would have been averted. For here was another case where the leading parties had more in common with each other and feared each other less than an incipient proletarian group.

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[1] *E. g.* Prudhomme, Dolivier, Chabot, *loc. cit.* in note 4, p. 449.

[2] *Archives parlementaires,* vol. LXIII, April 24, 1793, p. 197.

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REVIEWS

The Monroe Doctrine: its Importance in the International Life of the States of the New World. By ALEJANDRO ÁLVAREZ. New York, Oxford University Press, 1924.—ix, 573 pp.

La Política de los Estados Unidos en el Continente Americano. By RAÚL DE CÁRDENAS. Havana, Sociedad Editorial Cuba Contemporanea, 1921.—viii, 284 pp.

Hispanic-American Relations with the United States. By WILLIAM SPENCE ROBERTSON. New York, Oxford University Press, 1923.—xii, 470 pp.

Whenever the time comes for an historical treatment of the foreign policy of the United States with the degree of exhaustiveness which the importance of the subject demands, the origin, development and significance, actual and potential, of the relations between this country and the twenty republics of Latin America will take their rightful place in a work by some great historian or body of associated scholars. Even about those relations alone nothing systematic and sufficiently comprehensive has yet been published. Individual phases of them, to be sure, have been discussed at length, occasionally with breadth, and at times with thickness.

Concerning the Monroe Doctrine, books abound and articles to the number of legion; offering, so long as the meaning of that particular tenet continues to be made elusive, scant prospect that the output will lessen. Monographs in English which handle the more general features of the relationship between the United States and its neighbors to the southward, on the contrary, are few and contributions to periodicals none too plentiful. About the Monroe Doctrine the scholarly compilation edited by the eminent Chilean publicist and international lawyer, Dr. Alejandro Álvarez, is distinctive, because set forth in a language not his own, evincing wide knowledge and marked profundity of thought, and presenting the subject from a threefold standpoint, American, Latin-American and inter-American. Of the works in Spanish and Portuguese which range over the entire field, the large majority are partisan and polemic in character, rather than indicative of wisdom and understanding. Among those numbered in the small minority the one that

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seems to approach the nearest to a scholarly standard of erudition and fairness is the treatise by Dr. Raúl de Cárdenas, a Cuban publicist and international lawyer of repute, and author of a notable brochure on American foreign policy in its especial bearing upon Cuba. In English there are only three books dealing with the theme: two of them unequal in merit and conventionally political in scope and treatment, and the third, by Professor William Spence Robertson, far more comprehensive than either and in some respects better than both.

The work compiled and edited by Dr. Álvarez, on behalf of the Carnegie Endowment for International Peace, consists of two parts. Under the caption of "history, practice, ideas, facts", the first contains a chapter entitled "historical and comparative exposition of the ideas of the United States and of Latin America with regard to the Monroe Doctrine"; another dealing with "the principles of the Monroe Doctrine: their importance in the development and the new understanding of international law"; a third, on "Europe and the Monroe Doctrine", and a series of documentary intercalations and annexes by way of proof and illustration. The second part, constituting nearly two-thirds of the entire volume, is made up of utterances on the subject by Americans and Latin Americans, more or less representative of public and educated opinion. In the main, therefore, the book is one for reference purposes and altogether indispensable at that, both for the learned and thought-compelling views of the editor and for material translated and often difficult of access. The views in question are given substantially on pages 3-31 and 204-231.

As exemplified by his numerous and authoritative works, Dr. Álvarez is the originator and convinced advocate of the idea that there is such an entity as an "American public international law" apart, but not necessarily distinct, from the general body of theories and principles known under that name. He appears to accept also the prevailing concept of American and Latin-American writers that the pronouncement called the "Monroe Doctrine" has about it much of the continuous, if not unchanging, character of law, or at all events of a legal precept. Moreover, to all intents and purposes, it is said to have determined the actual course of thought and action, not of the United States alone, in reference to its Latin-American neighbors, or some of them, but of the Latin-American countries themselves. A certain pronouncement, accordingly, converted into a policy, which the United States had put forth peculiarly in its own

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national interest, for its own national defense and without specific regard at all for that of the Latin-American states, has become, through a tacit or expressed acceptance in common of its basic idea of national self-protection, a part of what might be termed an international American consciousness, legal and political, though not yet embodied technically in law.

Acknowledging the masterly service that Dr. Álvarez has rendered in the field of international law and relations, and testifying, as all students of the subject must, to a sense of abiding gratitude for this new contribution to the discussion of a theme of perennial interest, the reviewer regrets that he cannot assent to many of the statements made and the conclusions drawn. Among them are the following: "the policy of imperialism and hegemony developed by the United States in the name of the Monroe Doctrine, which caused the Latin-American States to have an aversion to this Doctrine"; "recent declarations by the United States which signify an abandonment of its policy of imperialism and hegemony"; "principal cases of application of the Monroe Doctrine", and "cases in which the United States seems to have disregarded the Monroe Doctrine and the hegemony". These are sub-titles of chapters; but their textual elaboration is quite consonant with what in substance they express or imply. They certainly suggest comment.

In the judgment of the reviewer, Dr. Álvarez does not make it altogether clear that between the Monroe Doctrine proper and its subsequent guises there exists a fundamental difference that ought not to be left obscure. Nor does he explain just how and why that difference arose. He does not—and indeed can not—prove that the "policy of imperialism and hegemony" was actually "developed" in the "name" of that particular tenet. He fails, also, to demonstrate that the practices which "caused the Latin-American States to have an aversion" were, not exemplifications of the Monroe Doctrine, but of things that belong in quite another category. "Signify", be it said, is a strong word to use in connection with an "abandonment" by the United States of its "policy of imperialism and hegemony", and "disregarded", an equivocal one at least, when referring to "hegemony" alone. How in all truth can the situation in which nature, man, history and circumstance have placed this country be abandoned or disregarded, because certain activities pursued in necessary accordance with it are designated by such terms? Finally, it may be queried, has the Monroe Doctrine ever really been "applied", and not something essentially distinct from it?

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The work by Dr. de Cárdenas is composed of a number of articles written originally for the magazine, *Cuba Contemporanea*. It considers the "policy of the United States in the American continent" from three angles of vision: territorial expansion, the Monroe Doctrine and preponderance in the Caribbean. After describing each of these phenomena, the author appends "critical notes". He supplies no index, however, and incorporates his documentary material into the text without citation of where it may be located. Were he as accurately grounded in his information about the history proper of the United States, as his ideas about the policy of this country toward certain of the Latin-American republics are definite, he would not have fallen into errors and misconceptions that mar some of the notes in question. This is especially the case with the section on territorial matters.

Discussing the Monroe Doctrine, Dr. de Cárdenas makes its antecedent the concept of isolation or of the differentiation between "the two spheres", of America and Europe. Like Dr. Álvarez, he does not distinguish it sharply from the various courses of action taken by the United States in reference to its southern neighbors, which have been labeled with the name of that pronouncement. He, too, narrates instances of the application and infringement of the Doctrine, expounds what he believes it to mean, and descants upon its international status. In the main he thinks that, whatever it may really signify, it has served a useful end, owing its popularity and force to the circumstance that it upholds the principle of self-government. He is of the opinion, also, that if for a while it may be said to have had a "presidential character" only, it has now become "congressional" as well.

With regard to the preponderance of the United States in the Caribbean, Dr. de Cárdenas asserts, and effectively demonstrates, that it is wholly inevitable. Once a powerful and progressive nation has rendered its strategic approaches secure, its political interest is bound to merge into economic concern, partly because of the necessity for places in which to invest surplus capital, partly because of its dependence upon certain commodities essential to its industrial welfare, the continued onflow of which must not be interrupted by commotions within the areas that produce wares of the sort desired. These he views as the paramount motives for American "interventionism" during the last thirty years.

Like the work by Dr. Álvarez, that by Professor Robertson is published under the auspices of the Carnegie Endowment for Inter-

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national Peace. The titles of its chapters, dealing successively with the "age of transition", the "foundations of international intercourse", the "political influence of the United States", the "Monroe Doctrine, allied doctrines and intervention", "mediation, arbitration and diplomatic adjustments", "commercial intercourse", "industrial enterprises of United States citizens", "educational contact", "geographic explorations and other scientific achievements", and "Pan-Americanism", indicate that the author has written a series of studies, more or less related though not entirely integrated, about a variety of phases of life and thought in the development of the southern republics of the New World, as that has been in greater or less degree affected by influences emanating from the United States. The period under discussion extends chronologically up to 1919. An appendix furnishes tables of commerce, 1830-1916. There is an elaborate bibliography, appropriately classified but not annotated. Four maps and charts also are provided.

As a book of reference, rather than for continuous reading, perhaps, this treatise by Professor Robertson has much value. In merit certainly it is conspicuous in many ways. That it offers the fruits of long years of research, ripened on the tree of scholarship, can not be doubted. The title, however, does not correspond altogether to the contents. Had the wording of it been framed so as to convey an impression of the southward expansion of American influence, it would have made the approximation closer. The work does not constitute a history of Hispanic-American relations with the United States, so much as an historical account of sundry points of contact and association, whereby public and private activities originating in this country have tended to shape the courses of men and events in the southern republics. Virtually no evidence is vouchsafed to show that forces proceeding from them had any effect upon the destinies of their northern neighbor.

The principles of selection and omission, no less than certain modes of statement, furthermore, do not seem readily explicable. For example, one may ponder why the Mexican War should be disposed of in half a sentence and the Pan-American Railway in a passing allusion; why so important an incident as the "Itata" case and so picturesque a personage as Hinton Rowan Helper, totally ignored. A similar query might be directed at the method of putting together descriptions of a number of disputes, and then telling separately how each was adjusted. A reader unfamiliar with the history of the areas colonized by Spain and Portugal would find the

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book difficult to follow. The specialist, on his part, if meticulous, might carp at slips, such as calling Las Casas a Franciscan, making Great Colombia exist in 1820, having President Monroe dispatch a message in December, 1816, and giving Venezuela an "embassy" at Washington.

WILLIAM R. SHEPHERD

Letters of Members of the Continental Congress. Edited by EDMUND C. BURNETT. Volume II, July 5, 1776 to December 31, 1777. Washington, The Carnegie Institution of Washington, 1923.—lxxiii, 638 pp.

Letters on the American Revolution, 1774-1776. Edited by MARGARET W. WILLARD. Boston, Houghton Mifflin Company, 1925.—xix, 370 pp.

Letters from America, 1776-1779. Being Letters of Brunswick, Hessian, and Waldeck Officers with the British Armies during the Revolution. Translated by RAY W. PETTENGILL. Boston, Houghton Mifflin Company, 1924.—xxvi, 281 pp.

The Journal of Nicholas Cresswell, 1774-1777. New York, The Dial Press, 1924.—ix, 287 pp.

The approaching sesqui-centennial anniversary of American independence adds fresh interest not only to the political events and issues of the Revolution but also to that eighteenth-century society whose fate it was to pass through the trials of revolution and to work out the problems of a new order. The four volumes under review are all concerned with the stormy years when constitutional controversy and political agitation had passed over into the actual clash of arms. Their chief interest, however, is not in the light which they throw upon military campaigns, but rather in the glimpses which they offer of contemporary states of mind, of the impact of war upon civilian society, and, in the case of the first of these volumes especially, of the men who, in the turmoil of war, were also deeply concerned with the building of a new fabric, to replace that which they had overthrown.

As a collection of documentary sources for future students of the American Revolution, the second volume of the *Letters of Members of the Continental Congress* is of prime importance. Beginning at about the point where Peter Force's monumental *American Archives* leave off, the present volume contains a much larger proportion than

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its predecessor of letters not hitherto printed. In his editorial preface, Mr. Burnett estimates that fully half of the material here presented appears in print for the first time. The new matter, which includes fragmentary notes and diaries as well as letters, is often of more than ordinary interest. Striking illustrations of this are the "Notes of Debates" kept by Secretary Thomson in July, 1777, dealing with a proposed campaign against West Florida and with the troublesome Gates-Schuyler controversy; the Notes of Benjamin Rush (February, 1777) for debates on paper money and price regulation; and some of Thomas Burke's "Abstracts of Debates". The correspondence of Henry Laurens assumes importance in 1777 and the editor reports that for the next two years it "furnishes by far the greatest single source of information about the proceedings of Congress, outside of the journals themselves".

It should be kept in mind that we have here the records not only of a legislative and administrative body but of a constituent assembly as well; for it was during the period covered by this volume that the Articles of Confederation were framed and submitted to the States. The importance of these additions to our still imperfect knowledge of congressional proceedings is obvious, and Mr. Burnett's admirably edited volume will be indispensable to future workers in this field.

Mrs. Willard's collection of *Letters on the American Revolution* has perhaps its chief value as an aid to the understanding of revolutionary psychology. It is made up of letters written from America to correspondents in England, from whom they passed, anonymously for the most part, to the columns of the contemporary English press. The writers were participants in varying degrees—sometimes hardly more than spectators—in the stirring scenes which they describe. In some cases it is possible to recognize the special interest or prejudice which colored their writing; sometimes the writer is accepting uncritically, and passing on, current rumors; in other cases, the news is apparently treated with a view to producing certain effects on English public opinion.

The readers of the London and Bristol newspapers from which these items have been collected were getting the American news from almost every conceivable angle. Among the writers were British officers cooped up in Boston; business agents of English principals; conservative citizens, loyalist or neutral; and ardent Whigs. As the editor points out, the letters as a whole indicate the rather surprising freedom with which adverse criticism, both of governmental

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policies and of military measures, was presented in the English press. Obviously this is the kind of material to be "used with caution"; but a discriminating reader will find much that is suggestive. Footnotes are sparingly but judiciously used; the source of each document is clearly indicated, with now and then brief explanations of persons or events referred to in the text. The editor makes no extravagant claims but the work was worth doing and has been well done.

Many of the letters in Mrs. Willard's volume were written by more or less temporary residents, commenting on people and manners from the outside. A more distinctly foreign, though not always unsympathetic, reaction to American society is to be found in Pettengill's *Letters from America.* The source of his material is A. L. Schlözer's *Briefwechsel meist historischen und politischen Inhalts,* a periodical issued at Göttingen during the war period and reissued in an edition of ten volumes (1780-82). Its editor, a distinguished historian and publicist, included in his field of interest almost every quarter of the globe and a considerable number of his items related to America and to the conflict then going on. His own sympathies were with the defenders of the old empire, rather than with the insurgent Americans, and he took pains now and then to caution his readers against taking colonial grievances too seriously. With or without comment, however, he did include some material which was calculated to give a not unfavorable view of American society, as, for instance, Steuben's enthusiastic account of his experiences.

By far the most important of the American items in the *Briefwechsel* were the letters written, partly to Schlözer himself and partly to other correspondents in the fatherland, by officers or soldiers of the German mercenary forces in the British service. The greater part of this material was put into English more than thirty years ago by the late William L. Stone, under the title, *Letters of Brunswick and Hessian Officers during the American Revolution* (Albany, 1891). The present translator who had done a considerable part of the work before Stone's book was brought to his attention, thought it worth while to proceed with his own translation, in view of certain defects in the older version and of the desirability of adding other material from the *Briefwechsel.* Accordingly we have here practically all the significant American items in that publication.

A comparison of the two versions indicates that Pettengill's translation, though by no means flawless in its rendering of the German

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idiom, is more trustworthy than that of Stone. From the point of view of editorial expertness, the present volume leaves something to be desired. The more fastidious investigator who wishes to check up any particular passage with the original may work it out by referring to the appendix; but his task would have been much lightened if a footnote had been given with each document indicating the precise location of the original. Pettengill has made some use of Stone's work, not always critically, as, for instance, in the reference to Burnaby's *Travels through the Middle Settlements of North America* (pp. 186-7). This author's name, correctly spelled in the German text (*Briefwechsel,* III, 153), is twice misspelled by Stone and the error is in both instances repeated in the present volume.

The most important section in this book consists of a series of letters from a German officer in Burgoyne's unlucky "Convention Army", describing the country through which he passed as a prisoner, from Saratoga to Cambridge, Massachusetts. There are also interesting glimpses of the Vermont frontier, of New York City and its vicinity, and of Philadelphia. The writers are more generally pleased with the country and its resources than with its people, though the latter also come in for a good word now and then. At Saratoga, for instance, one German officer noting the motley garb of the American troops, observed that they nevertheless stood "like soldiers", "so slender, so handsome, so sinewy, that it was a pleasure to look at them" (p. 111).

The *Journal of Nicholas Cresswell* records the experiences and observations of a young Derbyshire farmer who at the age of twenty-three "formed a determined resolution to go into America, be the consequence what it will". Despite parental opposition, he carried out his resolution and in May, 1774, landed in Virginia. A severe illness sent him on a sea voyage to Barbados, but in the following autumn he returned to Virginia, where he spent the greater part of his three years' stay in America, chiefly in the interior, on the Potomac in the neighborhood of Alexandria, where he saw something of Washington, and in Loudoun County. The prevailing epidemic of land speculation took him on two expeditions to the Ohio Valley where he saw and described realistically the rough frontier society of that day. He also visited Williamsburg, Annapolis, Lancaster, Philadelphia, Princeton and New York, jotting down his impressions of each place. New England he does not seem to have known at first hand, though he entertained a lively dislike of its inhabitants, "a very industrious people and in general

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very sober, but naturally addicted to all kinds of meanness" (*Journal,* p. 263).

A hard drinker himself, he seems to have found plenty of company in that form of entertainment, and he enters up punctiliously the nights on which he went to bed drunk. He was capable of ingratiating himself with the Indians by joining in one of their dances, "painted by my Squaw in the most elegant manner" (p. 109). Wherever he went during these war-time years, he was under suspicion because he failed to come out on the colonial side, and he had many anxious moments before he finally made his way to a British ship of war in New York harbor. By the autumn of 1777 he was back in England, where he married shortly afterwards and settled down to a comparatively uneventful life on his Derbyshire farm, leaving this journal to be published nearly a century and a half later by a descendant of one of his nephews.

Dubious as his conduct frequently was and in spite of an odd combination of conventional churchmanship with habits of a very different sort, Cresswell was obviously a man of some education and often a shrewd observer of the life he saw about him. With all his British prejudices, he set down a striking tribute to Washington (pp. 251-257), "one of Nature's geniuses, a Heaven-born General if there is any of that sort". It is interesting to compare this with the enthusiastic language of a Whig admirer, published in a London paper of January, 1776 (Willard, p. 228): "If you do not know Washington's person, perhaps you will be pleased to know that he has so much martial dignity in his deportment that you would distinguish him to be a General and a Soldier, from among ten thousand people; there is not a King in Europe but would look like a valet-de-chambre by his side."

To Cresswell, as to many other observers, the Whig movement appeared as something quite unlike a genuine crusade for freedom. There were, he agreed, blind guides in England who had their share of responsibility for the revolution; but he had his fling at the "rascally Presbyterian clergy with their cursed enthusiastic, uncharitable, bloody-minded, and cruel persecuting spirit". "France," he wrote, "is freedom's self, compared with America. Freedom of speech is what they formerly enjoyed, but it is now a stranger in the land" (*Journal,* p. 259). Americans, declared a British correspondent in 1776, were "more enslaved by their Congress than the subjects of Morocco" (Willard, p. 266); and the analogous situation of England under the rule of Cromwell and his "saints" is

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frequently recalled. A German officer doubtless had much the same phenomena in mind when he wrote in September, 1776: "You know the Huguenot wars in France; what Religion was there, Liberty is here, simply fanaticism, and the effects are the same" (Pettengill, p. 181). Without accepting such utterances at their face value, it must be admitted that our Whig ancestors believed in the efficacy of tar and feathers as a corrective of erroneous opinions. One application of this educational instrument is picturesquely described in the case of Thomas Randolph, a cooper of Middlesex County, New Jersey, who, for reviling the Continental Congress and other revolutionary bodies and endeavoring to obstruct their proceedings, was "ordered to be stripped naked, well coated with Tar and Feathers, and carried in a Waggon publicly around the Town". It is reassuring to be informed by our Whig correspondent that the ceremony was "conducted with that Regularity and Decorum that ought to be observed in all public Punishments", and that the offender "soon became duly sensible of his Offence" (Willard, p. 251).

EVARTS B. GREENE

Tudor Studies. Presented by the Board of Studies in History in the University of London to Albert Frederick Pollard. Being the Work of Twelve of his Colleagues and Pupils. Edited by R. W. SETON-WATSON. New York, Longmans, Green and Company, 1924.—vii, 319 pp.

For twenty-one years Professor Pollard has been connected with the University of London and for twelve years he achieved remarkable results as chairman of the Board of Studies in History. In consequence of his resignation of the latter position in 1923, it was determined to present him with a collection of essays prepared by colleagues and former students. The outcome is a fitting tribute to his conspicuous services as a productive scholar and as a director of the researches of others. Since there are twelve contributions, some by seasoned and recognized scholars, others by scholars of promise, it is difficult to do justice to the several pieces and adequately to appraise the whole work within the limits of a brief notice.

"Wales under Henry VII" is by Dr. Caroline Skeel, well known for her authoritative treatise on the Welsh marches. Vividly written, with deft humorous touches, it aims to show that "Henry VII through his descent, through what he did, and through what he re-

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frained from doing, prepared the way for the Act of Union in the reign of his second son."

In "Cardinal Morton's Register" the Reverend Professor Claude Jenkins cleverly weaves together materials which throw light on the ecclesiastical life of the past, including the dissolution of the monasteries. Owing to the sources available—and this applies to some of the other essays as well—parts are a bit fragmentary and uneven and parts contain perhaps overmuch routine detail. Professor Seton-Watson, who for nearly twenty years has wrought so valiantly with the bewildering problems of Austria-Hungary and the Near East, problems over which he has attained an enviable mastery, returns, in the "Abbot Trithemius", to an earlier field where patient German scholars have tilled laboriously, and from his own reading of the sources and literature, fashions a suggestive sketch of a quaint mediæval figure standing on the threshold of the modern world. Professor J. W. Allen presents a thoughtful and comprehensive study of the "Political Conceptions of Luther". Professor Hearnshaw, to whom students of English constitutional history are already indebted for valuable interpretations of leet records, has written a meaty and thought-provoking study of Bodin, whose Gargantuan monument few have had the patience to read in spite of its influence on Grotius, Hobbes and Montesquieu. While the writer's estimate is unusually well balanced, it is possible that he rather overestimates the extent of Bodin's influence on actual French politics and history. Mr. E. R. Adair's "William Thomas: a forgotten Clerk of the Privy Council", has a fine flavor of the sixteenth century, though the subject, notwithstanding his reputed learning, his manifest literary gifts, and his laudable pioneer efforts for the right teaching of English, had a futile and—according to modern standards of public morality—an unedifying career.

Mr. Plucknett's "Lancastrian Constitution" is a suggestive essay on a theme of vital importance in English constitutional development. With a praiseworthy scholarly caution, and carefully refraining from more definite conclusions than the evidence warrants, he presents new material, shrewdly interpreted, tending to show that the Lancastrian Constitution had not reached "the maturity and completeness" formerly believed. The work is based on law books and cases and is technically and closely reasoned. Mr. Plucknett opines that the law was still feudal and not public law, as we understand it; moreover, that prerogatives still meant certain privileges in procedure and pleading which the crown enjoyed in dealing

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with tenants-in-chief. The writer concludes with the suggestive reflection "that however familiar the forms of Lancastrian Government may seem, the spirit within them is completely alien to modern thought".

Miss Thornley writes on "The Destruction of Sanctuary", and Dr. Rachel Reid on "The Political Influence of the North Parts under the Later Tudors". Both are honest and helpful supplements to existing information on two institutions which in their time were picturesque and important. Professor Newton in "Tudor Reforms in the Royal Household" continues studies which were earlier presented in the *English Historical Review*. They throw new and welcome light on the chamberlains' and stewards' departments and on the Board of Green Cloth. Dr. P. V. B. Jones's doctoral dissertation on *The Household of a Tudor Noble* might be mentioned for supplementary information on a related topic.

Miss Davis's "Transformation of London" is to a large extent topographical and very detailed, but contains much that one is glad to learn about the dissolution of the monasteries in the city and on various aspects of London life in those days. Mr. J. E. Neale, treating of "The Commons Privilege of Free Speech in Parliament", writes well and discreetly. Tilting another lance at the "Lancastrian myth", he remarks that, "to the new historical school Henry IV's reign will appear, not as a premature rehearsal of the seventeenth century, but as an episode in the mediæval struggle between the baronage and the king for control of the government", with the Commons utilized, at least to some extent, by the former as a body to initiate their requests. Among other things, the writer aims to show that Parliament under Henry VIII and the other Tudors made more gains in liberty of speech than has been generally supposed; also he hazards the interesting assertion that Henry VIII, masterful as he was, "chose to persuade rather than to coerce members". However, the aim of the Tudors to prevent discussion of public affairs in private assemblies tended to check effective groupings and organized action. Yet, Elizabeth, Mr. Neale declares, while she punished members, did not do so for freedom of speech, and he concludes with the striking observation that "she passed away, the splendid though involuntary betrayer of the cause of monarchy".

Readers of these miscellaneous studies will find in them not a little new information as well as suggestive points of view.

ARTHUR LYON CROSS

UNIVERSITY OF MICHIGAN

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The Cambridge Ancient History, Volume II. The Egyptian and Hittite Empires to c. 1000 B. C. Edited by J. B. BURY, S. A. COOK and F. E. ADCOCK. New York, The Macmillan Company, 1924.—xxv, 751 pp.

The history of the six centuries of ancient civilization presented in this volume (about 1600 to 1000 B. C.) is capable of a greater unity of treatment than was possible in the presentation of the long and disjointed series of events and movements of the two thousand years which had to be covered in the initial volume of *The Cambridge Ancient History*. This greater cohesion has been fully attained by the editors and the twelve scholars who have assisted them. The work was apparently planned, if one may judge by the title, to assemble about two major studies, that of the Egyptian Empire and that of the Hittite Empire. The first half of the volume does, indeed, group itself around the six chapters upon the political history of the Egyptian Empire (ch. iii-viii), ably and most interestingly presented by Professor James H. Breasted. But the second great section seems to the reviewer to center about the two chapters which Professor J. B. Bury, chief editor of the series, has handled. These deal with the "Achaeans and the Trojan War" (ch. xvii) and with "Homer" (ch. xviii). It is these two large units which will inevitably attract the greatest amount of attention from those who read the book. These two groups, for totally different reasons, will also be subjected to a greater degree of controversy than the remaining separate chapters, written by well selected specialists, which surround them.

Professor Breasted's six chapters upon the Egyptian Empire are written with that zest and enthusiasm which, combined with his unquestionable knowledge, have done so much to arouse and sustain the interest in ancient Egypt now evident in the United States. The outstanding pedagogical and literary virtue of this most capable Egyptologist—that of virile enthusiasm—is also a minor defect in him as an historian. To Professor Breasted that interesting religious fanatic Ikhnaton (Amenhotep IV) is clearly a most sympathetic figure; and his discussion of Ikhnaton's reign (ch. vi) is fascinating reading. He is the "first *individual* in human society" (p. 109). He is "not only the world's first idealist and the world's first *individual,* but also the earliest monotheist, and the first prophet of internationalism—the most remarkable figure of the Ancient World before the Hebrews". One wonders! Ikhnaton was, indeed, a

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tragic figure, a pathetically futile ruler. But was he, actually, an important historical personality? "While Ikhnaton and his court were singing hymns to the sun an empire was being lost to Egypt in Asia." This is the more sober judgment upon Ikhnaton presented by T. Eric Peet (p. 207) in his instructive treatment of "Egyptian Life and Thought". Even in his religious reforms Ikhnaton was a failure. "It is generally said that the revolution left no mark on Egyptian religion. This may be almost literally true." This is Professor Peet talking (p. 207). Upon the Tutenkhamon discoveries of Lord Carnarvon, Professor Breasted says: "In the whole range of archæological excavation this is the most important body of materials which has ever fallen to the fortunate lot of the excavator" (note to p. 129). This is a thoroughly subjective and a highly controversial statement.

The two opening chapters of the book, on the peoples of Asia Minor and of Europe, have wisely been given to a comparative philologist, Mr. Peter Giles of Cambridge University. He writes well and clearly and his judgments seem to be carefully drawn. "No other view, to say the least, appears more plausible" than the statement of Herodotus that it was the Lydians who colonized Etruria (p. 11). Mr. Giles is the owner of a sense of humor, as shown by his statement that the Lithuanian literary movement is perhaps more in evidence in Chicago than it is in its native country (p. 23). A sense of humor is as rare as it is valuable in a philologist.

Mr. R. Campbell Thompson of Oxford presents the history of the Tigris-Euphrates valleys (1600-1100 B. C.) in chapter x. He emphasizes the importance of the introduction of the horse from the east. He makes the interesting suggestion that the marked increase of inter-areal political relations and the spread of the use of cuneiform characters are connected with the use of the horse in this period (pp. 227-28). The summary of the present status of our knowledge of the Hittites (ch. xi) is in the hands of that admirable scholar, Mr. D. G. Hogarth. He uses the term "Hittite" in a cultural sense, follows the "thin stream" of Hittite history to 1200 B. C., and concludes with a brief and restrained statement of the degree and character of "Hittite" civilization. In a note to page 269 he warns us against the use, at present, of the translations of the Hittite legal code, confining himself to those deductions which may safely be drawn from the monumental evidence. In the competent hands of Hogarth the editors have placed, also, the history of the Greek settlement of Asia Minor and Cyprus (ch. xx).

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The identification of certain tribes among the "Peoples of the Sea" who appeared in Egypt in the twelfth century B. C., with the Ionians and Achaeans, others with the western Tyrrhenians, Sicilians and Sardinians, has always seemed to the reviewer to have been unwarranted. It appears from the detailed discussion of this point by Mr. H. R. Hall (in ch. xii) that this identification can no longer be maintained in the case of the Ionians (p. 281); that the Shakalasha were more probably "Sagalassians from Pisidia" than Sicilians (p. 282); the Shardina as well as the Tursha were, it may be, from Sardes and Lydia respectively; and that the best that can now be said for the Akaiwasha-Achaean identification is that "it is by no means beyond the bounds of probability" (p. 283). That means, of course, that it is very doubtful. The historical shoe-string of argument which derived the Peleset (Philistines) from Crete, as Minoans, may now be regarded as definitely broken (pp. 285-88). In chapter xv H. R. Hall also treats systematically the art of Egypt and the Near East in the period covered by the volume.

There are two chapters upon Syria and Palestine by Mr. Stanley A. Cook; six chapters on Cretan-Mycenaean and early Hellenic history; and one chapter (xxi) upon the peoples of the west. Out of the mass of scholarly acumen here represented one must perforce select chapter xviii upon Homer written by Professor J. B. Bury. His discussion of the Homeric question will be a powerful assistance to those who hold that the Iliad was written by one great literary genius, named Homer (pp. 502-510). This great epicist can hardly have lived later than the middle of the ninth century B. C. (p. 507). Bury acknowledges the possibility that there are large interpolated sections, as for example, that Book ix of the Iliad was written in after Book xvi. George Grote insisted upon this; and so it may be true. *But the interpolator may have been Homer himself,* according to Bury. Bury is, indeed, a literary fundamentalist. Not only did Homer write the Iliad. He also wrote the Odyssey, probably (p. 507). Professor Bury's argument is all so seductively simple. All one has to do is to lay aside one's scepticism — and believe. Then all is easy. Everything is explained. One wants to take it all, with the simple and childlike faith that one must bring to its acceptance. But the old doubts persist. The unitarian doctrine, when it encompasses unity of authorship for both the Iliad and Odyssey, as with Professor Bury, is conservative enough. Even Xenon and Hellanicus at Alexandria in the third century B. C., believed in a divided authorship for these two epics. Professor Halli-

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day, who has written the final chapter on the "Religion and Mythology of the Greeks" (ch. xxii), implies that he is still a heretic in this matter. For he states that hero-worship and cults of the dead were known to the author of the Odyssey; but no traces of either appear in the Iliad. Professor Bury seems to think that such inconsistencies and contradictions are to be expected in any author (p. 506). One has only to assume that Homer, when he wrote the Odyssey after the Iliad, was thoroughly consistent in his inconsistencies. In this assumption many scholars will not be able to follow Professor Bury.

WILLIAM LINN WESTERMANN

Canadian Federation. By REGINALD GEORGE TROTTER. Toronto and London, J. M. Dent and Sons, 1924.—xiv, 348 pp.

This book describes the conditions which made the confederation of the British North American provinces, in the words of the author, "not only possible, but also timely, necessary, and even, one is tempted to say, inevitable". Of the three parts into which it is divided, the first narrates, mainly from the political point of view, the antecedents and the achievement of confederation, the second has to do with the problems of communication in British North America and their relation to confederation, and the third, a brief conclusion, is by way of a résumé of what has preceded.

Professor Trotter maintains throughout a high standard of historical scholarship, and even when he tells a story that has been told before, his contact with the sources enables him to tell it freshly. In the second part, especially, he makes extensive use of unfamiliar material, some of it being in the form of manuscript records in the Canadian Archives at Ottawa. In order to follow the narrative intelligently the attentive reader will constantly feel the need of a map, and it is much to be regretted that the only one included in the volume is about as useless as a map could be. It abounds in place names, but most of them are unrelated to anything in the text, and it fails to indicate the routes of the roads, canals and railways, projected and actually constructed, to which the author gives detailed consideration. It would be far more convenient for the student who wishes to master the book, and would probably not do violence to the æsthetic sensibilities of the general reader, if the references, which contain much valuable bibliographical and other matter, were placed at the foot of the page instead of at the end of the chapter.

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It is one of the unhappy signs of the times that publishers, in deference to considerations of salesmanship, think it necessary to divert attention from evidences of research in books which they publish in order to palliate their scholarly character.

Mr. Trotter does not disappoint the expectations which he raises by promising us something new and significant in the story of Canadian confederation. It has always been understood that the desire for railway connection between Canada and the Maritime Provinces played a part in bringing about confederation; the Maritime Provinces were unwilling to federate with Canada unless such connection was assured, and the British North America Act made it the duty of the new Dominion to provide for the speedy construction of the Intercolonial Railway, joining Halifax with the St. Lawrence. But confederation, Mr. Trotter observes, was not the result of a great popular movement; it was rather the work of a comparatively few men, and it is his opinion that a majority of these were vitally interested in the Intercolonial project, and that a good many of them viewed confederation primarily as a means of carrying it to accomplishment. Nor, apparently, was immediate self-interest wholly absent from the complex of factors that led to the establishment of the Dominion. A. A. Dorion, the leading French-Canadian opponent of confederation, asserted in the Parliament of Canada that confederation was a scheme devised in the interest of the Grand Trunk Railway, whose directors were eager to extend their system to the ports of the Maritime Provinces. He said:

> The Grand Trunk people are at the bottom of it; and I find that at the last meeting of the Grand Trunk Railway Company, Mr. Watkin did in advance congratulate the shareholders and bondholders on the bright prospects opening before them, by the enhanced value which will be given to their shares and bonds, by the adoption of the Confederation scheme and the construction of the Intercolonial as part of the scheme.

The same charge against the Grand Trunk was made by E. G. Penny, editor of the Montreal *Herald,* in a pamphlet published in 1867. Mr. Trotter thinks that there was a groundwork of fact for such a view and remarks that Canada "bred seemingly innumerable railway promoters and investors among her politicians". The British North America Act has never, even by the most patriotic Canadians, been invested with the halo that surrounds our Constitution, and it is therefore unlikely that Mr. Trotter's disclosures will cause any such commotion in Canada as Dr. Beard's *Economic In-*

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terpretation of the Constitution aroused some years ago in the United States. Nor would it be fair to give the impression that Mr. Trotter writes distinctively as an economic interpreter. In his view Canadian federation was the work of a few men "inspired by wide political vision, actuated by economic interest, stimulated by dangers of foreign aggression."

Several chapters are devoted to the antecedents of the westward expansion of Canada and the background of the provision of the British North America Act for the admission into the Dominion of Rupert's Land, the North-West Territory and British Columbia. They show that the idea that the extension of the Dominion to the Pacific was a fortunate afterthought is quite unwarranted.

ROBERT LIVINGSTON SCHUYLER

Studies in the History of Mediæval Science. By CHARLES HOMER HASKINS. Cambridge, Harvard University Press, 1924. —xiv, 411 pp.

This learned volume by the Gurney Professor of History and Political Science at Harvard is the twenty-ninth in the series of Harvard Historical Studies. It fully sustains the author's reputation as one of the very foremost mediævalists of America. The book makes no pretence to be a history of mediæval science, but, as the title suggests and the preface confesses, it is a contribution towards the materials for such a history. It is essentially a reprint, with the addition of considerable bibliographical matter in the footnotes and of three new and interesting chapters of summary and estimate, of a number of papers on the science of the twelfth and early thirteenth centuries which have appeared during the past fifteen years in various historical and philological journals.

Professor Haskins divides his *Studies* into four groups. The first group (chapters i-vii) deals with the Arabic science. An illuminating chapter on the rôle of Spain as the transmitter of Arabic science into western Europe is followed by special studies of Adelard of Bath, Hermann of Carinthia, Hugo Sanctallensis, the astronomer of the twelfth century, the introduction of Arabic science into England, and the Syrian translators of the age of the Crusades. A second group of studies (chapters viii-xi) is devoted to the Greek element in the twelfth-century renaissance, with a discussion of the Sicilian and the North Italian translators of the Greek classics and the early versions of Aristotle's "Posterior Analytics". The third

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group (chapters xii-xiv) describes the lively scientific interests of the court of the great Hohenstaufen Emperor Frederick II. And the final group of four chapters, under the caption "Other Studies", treats such various subjects as the relation of the abacus to the English Exchequer, Nimrod the Giant, the mythical founder of astronomy, early works of falconry, and a list of text-books in use at the close of the twelfth century. This mere analysis of the Table of Contents will create the suspicion that Professor Haskins's book is not for the "lay reader"; and a perusal of almost any one of the chapters, with its elaborate bibliographical and chronological apparatus of criticism, its long quotations of mediæval Latin, and its scientific discussion of the minute points of scholarship, will confirm the suspicion. Only at two or three points does the author lay aside the paraphernalia of criticism and assume the narrative of the historian. The introductory chapter on the debt of Europe to Spain for the transmission of Arabic science, the eighth chapter on the Greek element in the renaissance of the twelfth century, and the twelfth chapter on science at the court of the Emperor Frederick, are descriptive résumés of the main argument of the volume, and can be read with profit and delight by the general student of history.

It is tempting to the reviewer to compare Professor Haskins's *Studies* with the recent work of Professor Lynn Thorndike on *The History of Magic and Experimental Science*. The latter work is broader in the sense that it covers the first thirteen centuries of our era and that it deals far more exhaustively and continuously with the content of mediæval scientific literature. On the other hand, Professor Haskins goes more deeply into critical detail, brings us a wealth of new manuscript sources, and opens up fields, like the study of falconry and the abacus, that lie beyond the stricter occupation of Professor Thorndike with magic and experimental science. The form of Professor Haskins's book suffers somewhat by his printing essentially unchanged as successive chapters essays which have appeared at various times in various publications. The result is a sense of the lack of connective tissue, on the one hand, and of the repetition of facts, names, and judgments, on the other. This repetition is especially noticeable in the case of references to the students of Arabic culture in Spain, and to the scientific activities of the court of Frederick II. To take a single example: the curious questionnaire which the Emperor submitted to his chief astrologer, Michael Scot, and which reads like an extended advertising prospectus of the *Book of Knowledge*, is printed in Professor Haskins's transla-

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tion in the chapter on "Science at the Court of the Emperor Frederick" (pp. 266-7), and again in Latin in the chapter on "Michael Scot" (pp. 292-4)—in the latter case with Michael's naively boastful assurance to his lord: *que vobis breviter et sine disputatione pandere non pigritabor si Deus voluerit.*

Although the book is largely concerned with the technical problems of the critical editor, there are, nevertheless, many suggestions of interest to the student of mediæval history. Professor Haskins's discussion of the Greek translators in Italy in the twelfth century adds to the refutation of the traditional view that the west had to wait for the "flight of scholars" from captured Constantinople for its introduction to the Greek authors; and his revelation of the paucity of the contribution of the Syrian scholars refutes the other traditional view that the Crusades opened the way for the flow of culture from the Near East into Europe. "Plainly," says Professor Haskins, "the Crusaders were men of action rather than men of learning, and there was little occasion for western scholars to seek by long journeys to Syria that which they could find nearer home in Spain" (p. 130). Indeed, the most valuable, as it is the most considerable, part of Professor Haskins's book is the group of chapters dealing with the transmission to western Europe, through Spain, of the Arabic learning — which means not only the original Arabic science, but Syrian, Arabic and Hebrew translations and expositions of the Greek learning as well. Although Roger Bacon, as long ago as the thirteenth century, hailed the cosmopolitan scholarship of Spain as the fount of mediæval science, scholars have singularly neglected that source of learning down to the present generation. Only about a score of years ago Mr. Henry O. Taylor could write two thick volumes on *The Mediæval Mind* with scarcely a passing mention of the Arabic contribution or of the great translators, commentators and transmitters of the Iberian peninsula.

The reader of the *Studies* will be impressed with the fact that the twelfth century was a critical era in the development of European thought. The question was whether the scientific renaissance as embodied in the schools of Spain and Sicily, or the scholastic tradition as handed down through the church fathers of the west should prevail; whether Aristotle should supersede Augustine, or Augustine should absorb Aristotle. The church, with its immense impetus of religious and political prestige, won the day. The substance of Saint Augustine was clothed in the form of Aristotelian logic, and, in spite of lingering devotions to secular science in the works of an

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Alexander of Hales and an Albert the Great, Scholasticism, which reduced science to the humble rôle of handmaiden to theology, triumphed in the great works of Thomas Aquinas and Saint Bonaventura. The Renaissance of the quattrocento reintroduced classicism, and the world waited until the seventeenth century for the revival of the scientific promise of the twelfth.

DAVID S. MUZZEY

The Women's Garment Workers: a History of the International Ladies' Garment Workers' Union. By LOUIS LEVINE. New York, B. W. Huebsch, 1925.—xxv, 608 pp.

Some of us who wear ready-made clothes can claim a personal acquaintance with our outfitters, but breathes there one who knows the *makers* of the garments? Probably not. Moreover, barring abandonment of economic specialization and division of labor and a return to the Ice Age, we may never hope to know, personally and individually, the makers of our clothes. They are too numerous. We may, however, hope to know them as a group. That hope has been made more realizable by the International Ladies' Garment Workers' Union and by Louis Levine.

Dr. Levine introduces the women's garment workers to us—that is to say, to the American public. He introduces some of us to the rest of us. And it is a magnificent introduction. It is, also, more than an introduction. Louis Levine does not merely present the women's garment workers to us; he tells us the truly epic story of their struggles and achievements, of their temperamental efforts to adjust themselves to a temperamental industry, of their efforts to take some of the "temperament" out of the industry by revising its practices and processes in such a way as to make it more compatible with a high standard of life for those engaged in it.

The circumstances under which this history was written reflect great credit upon the organization which is its theme. At its Cleveland convention in 1922, the International Ladies' Garment Workers' Union instructed its General Executive Board to prepare and publish a history of the union—a history which should have as its purpose the inspiration of its members and their enlightenment in respect to the facts of their union's history. "This history," say the officials of the International in a foreword to the published book, "will acquaint the second generation of our membership with the aims and achievements of their forerunners. . . ." Having made

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the happy selection of Dr. Levine to assemble the material and write the history, the officials of the union gave him free rein. He was given every encouragement to write a history which would set forth without bias and without varnish, yet with sympathetic understanding, the facts involved in the union's quarter-century of activity. On many occasions this activity bred internal dissension of the bitterest sort, heart-breaking struggles between the Lefts and the Rights, the emergence of selfish motives of personal aggrandizement; at times it took the form of ill-advised or short-sighted programs of organization and development. These things were not to be glossed over. This was not to be an administration record like unto that of the past *Seven Years of Progress* in the government of New York City. All of the records of the International, evidently, were put at Dr. Levine's disposal and every facility given him for the production of a full record of the union's life and a balanced appraisal of its policies, practices and achievements. He was made "responsible for the plan of the book, its size, the arrangement of the material, the interpretation of events and for the general point of view." What the officers of the International wanted, says Dr. Levine in his Preface, was "as accurate and vivid a reconstruction of the past as was possible."

The only serious limitation put upon the author by the union was one of time. The whole job, from preliminary interviewing to the last chunk of writing, was done in fifteen months. This means, of course, that Dr. Levine had to do a tremendous amount of work and do a very large part of it, at least, under heavy pressure. The documentary raw material on which, in part, the history is based, is for the most part, especially for the earlier years, scattered, inaccessible and fragmentary. Much of the early history is lost beyond recall except in so far as it lingers more or less hazily in the memories of former leaders and other active members of the union who still survive. To capture for his story this unrecorded history Dr. Levine interviewed hundreds of persons. The better to describe and evaluate the living organization of today, he visited meetings of local unions, joint boards, executive boards; watched the organization in every phase of its work.

The result is a piece of trade-union history, and of industrial development as well, which is in some ways unique among histories of individual labor organizations. Such general and comprehensive descriptions of union organizations are all too scarce: we now have in this country just two outstanding contributions of this sort: Bar-

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nett's study of the printers, and Levine's annals of the garment workers. There are a few other treatises on individual unions but, in the reviewer's opinion, they lack the comprehensiveness and a certain epic quality which characterize the work of these two histories.

The first hundred pages of Dr. Levine's book deal with the early development of the industry and with the sporadic and ephemeral manifestations of unionism in it. The bulk of the book is devoted to the story of the life and activities of the International Ladies' Garment Workers' Union from its birth in 1900 down to and including its present state of being in 1924. The value of the book is enhanced by appendices containing: (1) statistical tables of numbers of establishments and wage-earners, wage rates and hours of labor and other data about the union, (2) descriptions of occupations, (3) the text of the Protocol of Peace of 1910, (4) a selective bibliography, (5) an index of names of persons actively interested in the development of the union or the industry, with brief notes of identification, and (6) a topical index.

The twenty-five year period opens with only the barest beginnings of organization in the industry; it closes with the industry in the very front rank of organized trades. When the International was launched, the garment industry was marked by standards of employment and working conditions distinctly below most of the major industries: wage rates and earnings were low; hours were long; sanitary conditions were extremely bad. It was an outstanding illustration of a sweated industry. At the end of the period the industry is paying higher wages than most other manufacturing industries; hours are forty and forty-four per week instead of sixty; a great transformation has been effected in sanitary conditions. These things have been brought about as a result, primarily, of the unionization of the garment industry. Dr. Levine gives us the details: Organization, little by little — set-back — reorganization; strikes—negotiations—more strikes; electioneering—union politics—squabbles between Lefts and Rights.

The International has faced uniquely difficult problems arising from certain characteristics of the industry: Production in it is highly irregular, both seasonally and cyclically; it is an immigrant industry, predominantly a Jewish, immigrant industry. The unusually pronounced irregularities in production, due to changes in styles, changes in seasons and changes in the business cycle, make it a more difficult problem of industrial administration, whether this

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administration is undertaken solely by the employers, or jointly by employers and workers. The racial characteristics of the workers and the fact that they are immigrants necessitates the use by the employer of different tactics in negotiating with them—and this despite (or, perhaps, on account of) the fact that most of the employers themselves are Jewish and many of them are immigrants.

A further difficulty lies in the highly competitive nature of the industry and the unusual and somewhat anomalous character of the economic groups which constitute its personnel. The union has found it necessary to negotiate (and, on occasion, to fight) not only with manufacturing employers, but also with jobbers and sub-manufacturers. Time after time, the International, with one of these groups wheedled around to a settlement, has found itself completely frustrated because neither union nor sub-manufacturers could keep the jobbers in line. Indeed there seems to be no less friction between jobbers and sub-manufacturers than between either of these entrepreneur groups and the union. The result is that, not infrequently, union representatives find themselves acting as mediators between sub-manufacturers and jobbers!

Since 1910 the union has come more and more to share control of the industry with the entrepreneur groups. This is particularly true in respect to wages and the determination of wage rates, sanitary conditions, and the hiring and discharge of workers. Efforts are now being made by collective agreement to stay the somewhat menacing shrinkage in the size of the average shop. Similar joint efforts are being made to regularize production (and hence earnings) in the industry. Fruits of these efforts are the Cleveland market plan for guaranteed employment and unemployment insurance and the plan of unemployment insurance which is just now being put into operation in New York and other important markets.

Dr. Levine reports that, at the present time, "the concrete policies of the International . . . are centered about five main points". These are, he says, the following:

> Firstly, the large shop must again be made the dominant factor in the industry. Secondly, week work must be extended to all trades. Thirdly, methods of measuring earnings in relation to output must be evolved. Fourthly, the working week must be further reduced to forty hours. Fifthly, the effects of the irregular and seasonal character of the industry on the worker must be alleviated by some scheme which would provide insurance against inevitable idleness [p. 449].

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It would seem that in the women's garment trade we have a union which consciously has set out, by deliberate forward-planning efforts, largely initiated by it and carried forward jointly by union and entrepreneur organizations, to rearrange, if not to revolutionize, an industry.

PAUL F. BRISSENDEN

COLUMBIA UNIVERSITY

The Agricultural Crisis, 1920-23. By R. R. ENFIELD. New York, Longmans, Green and Company, 1924.—xi, 211 pp.

The author has treated this subject under four titles: "The Crisis", "The Cause", "The Effect", and "Stabilization". His purpose as set forth in the preface is to offer an analysis of "the economic causes which determine agricultural prices". In this respect he makes a most praiseworthy departure from the practice of many treatises purporting to deal with the fundamental difficulties of agriculture since the war.

The first chapter is brief, for the most part an exposition of the main facts involved. It is recognized, however, that the case is not one pertaining to agriculture alone: "The farmer's fate was bound up with that of the industrialists throughout the civilized world." In the second chapter the same thought is put into the words: "the plain truth is that the root causes of the agricultural crisis were far removed from agriculture." A chart shows that, in England, the rise and fall of agricultural prices was almost exactly coincident with that of wholesale commodities.

After stating the question as one primarily of economics, the author launches into a discussion of the relation of money to prices. Probably we are all, to some extent, quantity theorists as regards money and prices. Mr. Enfield, while he makes some statements to the contrary, seems to accept the quantity theory with few modifications. His view concerning the power of the banks to control the price level is positive and extreme. The action of the Federal Reserve Bank in raising the rediscount rate is declared to have been the cause of the downward turn in prices in America in May 1920. An increase in the rate had, however, been made in December 1919 without effect. The author's belief in the power of the government, acting more or less consciously and directly through the banks, to control prices is expressed clearly: "In monetary deflation lay the origin of the depression." He goes on to say that the depression in England was due mainly to the efforts there made to keep the pound

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sterling at par with our dollar. Mr. Enfield believes that the main hope lies in the stabilization of prices, and that the Bank of England and the Treasury will determine and manage the policy. He does not fail to see the political dangers in a conscious price manipulation, but he believes the difficulties are not insurmountable.

Turning from the stabilization of the price level through action governing the supply of money, and instruments of credit, Mr. Enfield attacks the question of stability in agricultural production and marketing. Reference is made to the seasonal fluctuations in prices due, presumably, to heavy selling soon after harvest. While some qualification is offered to the general statement that the depression of prices resulting from too rapid marketing is so severe as to constitute a calamity, still more qualification is needed. Were this fall in prices half as significant as is widely believed, any outside speculator could, merely by buying in the autumn and selling in the spring, soon become independently wealthy. A study of the facts takes away much of the temptation to go blindly into the venture.

Mr. Enfield gives unstinted praise to the efforts of American agricultural cooperatives in their work of stabilizing prices. Unfortunately his information and inspiration seem to be drawn mainly from a single book on cooperation and marketing. Hardly another book gives a similar impression. The dependence of our cooperatives on contract; the control of the volume of the product to be handled; the solution of financial problems; the furnishing to the market of the amounts which may be taken at a desired price—all these desired consummations are greatly overestimated in relation to the accomplishments thus far realized.

The most unfortunate statement made in connection with the discussion of cooperative marketing would seem to be: "Cooperative or commodity marketing does lead to monopoly, there is no question about it. It is not until some degree of monopolistic control has been reached that any power of stabilizing the market is obtained." Yet, thus far there is not an agricultural cooperative company in America that has anything more than a semblance of monopoly power. Moreover, those that seem to exercise a little monopoly power are the first to get into trouble, and the trouble is of the worst kind. The overstimulated prices flatten out promptly and completely. One is tempted to say that the stabilization of prices brought about through cooperation is in inverse ratio to the attempt at monopoly methods. The California Fruit Growers' Exchange is clearly one of our best companies. It attempts nothing in the nature of monopoly.

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This exchange does "feed the market" very effectively so far as it can be done at a given moment, but it has not thus far been able to cope with the longer cycles, that is, cycles beyond a single season.

Mr. Enfield speaks of the seasonal production of butter and cheese, and receipts by "the association" during the flush season for sale later. "Thus the market is supplied according to its needs and fluctuation reduced to a minimum." Hardly a pound of butter or cheese is held by a cooperative group for the seasonal rise, such speculative work being done privately. This sort of seasonal storing and selling is an ideal to be reached. It is done by some of the fruit associations. No major crop or product has been so handled. Mr. Enfield states that cooperation will work better in the handling of export goods than of those for home use; but American cooperatives deal almost exclusively in goods used at home.

We all hope for greater stability of prices, though too much stability would defeat its own purpose. The best indication of overproduction is a lowering of prices; the best suggestion that the market will take more is a rise of prices. Covering these up by any scheme whereby a national corporation handled the main part of the wholesale buying and selling—a plan apparently viewed favorably by the author—would cause not merely political difficulties but also grave problems of production, unless rare wisdom guided the management. We have not all agreed that the high war prices are to be accounted for by the simple application of the quantity theory of money test. Neither is there general acceptance of the belief that the Federal Reserve Board has within its power the control of the general price level. No doubt it is a contributing influence in the rapidity of changes. However, the psychology of war conditions; the demand for goods of a given quality and without delay; the turning loose of all potential purchasing power at a given moment; the later collapse of buying power due to exhaustion and ruin—these influences, intangible and elusive, can hardly be summed up in the raising and lowering of the rediscount rate by a bank board.

Mr. Enfield's book carries the subject into the proper field It is stimulating. Some will agree with the monetary views expressed, more will not, except with reservations. And the achievement of stabilization, the one thing needful, through cooperation, has not been accomplished to any such degree as the author has been led to believe.

B. H. HIBBARD

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The Growth of the Law. By BENJAMIN N. CARDOZO. New Haven, Yale University Press, 1924.—145 pp.

Judge Cardozo, of the New York Court of Appeals, has given us another book which fully comes up to the expectations of those who were fortunate enough to read his earlier lectures at Yale. Lucid in style, eclectic in philosophy, well balanced in point of view, this work is the contribution of a true scholar who sees the judicial process steadily and sees it whole. It carries further the analysis of the function of adjudication which the former volume so brilliantly began. Its phrases are pithy and shot through with imagination tempered by insight. There is a distinct touch of the artist coupled with the incisiveness of the trained thinker, the saneness of the man of affairs coupled with the sympathy of the humanist. When the author paraphrases Hamlet's famous epigram in his speech to the players, it is with appositeness but without vulgar show of learning. He assumes in the reader culture equal to his own, and leaves him to realize for himself that a judge may know his Shakespeare. The same is true of his other literary allusions.

It will be interesting to compare Judge Cardozo's definition of law with that of Professor W. W. Willoughby in the tenth chapter of his recent monumental treatise on *The Fundamental Concepts of Public Law.* It is significant that the professor of political science is a more thoroughgoing Austinian than the judge upon the bench. "A principle," says Cardozo, "or a rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is, then, for the purpose of our study, a principle or rule of law" (p. 52).

It would be unfair to the prospective reader, however, to go further into the content of this illuminating little volume. That would be an act of unkindness, for to try to separate the thought from the language in which it is expressed were to make the very thought itself to suffer. And this, forsooth, is something that can only be said of a master of style. Your true master of style is never mastered by his style, never is one who tries to make up in form what he lacks in matter. That is, of course, a veritable impossibility. He is one whose idea is so dynamic and so real that he has no trouble in expressing it in words that suggest much more than the mere words say. He not only thinks more than he says, but he possesses a subtle ability to make his reader do so, too. Such an one is Judge Cardozo.

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Let the student of jurisprudence search for himself, and he will be richly rewarded. He will see sociological jurisprudence at its best. He will see it more vividly than in Pound, although Cardozo pays tribute, and justly so, to the learned Dean. He will realize that what the law needs is a "principle of growth". He will get a glimpse into the functioning of the judicial mind. He will see both stability and progress given their due weight. He will find a definition of law which is founded upon the facts of the law in action. He will discover further light upon the thesis of the author's earlier book. He will be impressed by the fact that no formula for the development of the law has been hit upon, if indeed it can be. That is a matter of trial and error by judges equipped with liberal education, training and experience, possessed of a sort of poetic imagination and the intuition of genius, and ever guided by the standards of the community and of the age on the one hand, and by the investigations of a fact-finding agency on the other. The reviewer believes that in this connection Judge Cardozo has unwittingly described himself.

JAMES HART

UNIVERSITY OF MICHIGAN

American Problems. A Selection of Speeches and Prophecies. By WILLIAM E. BORAH. Edited by HORACE GREEN. New York, Duffield and Company, 1924.—329 pp.

The passing of Senator Lodge and the promotion of Senator Borah to the chairmanship of the Committee on Foreign Relations lends new interest to this volume of speeches, most of which were delivered in the Senate. The subjects discussed include the bonus, the duty of obeying the Constitution, the recall of judges, the restriction of immigration, the release of political prisoners, free speech, the recognition of Russia, the Treaty of Versailles and the League of Nations. Thus a large part of the entire range of public questions with which Senator Borah has been concerned is represented. As might be expected, the League of Nations and related subjects are given a considerable portion of the space. The addresses dealing with this field include one on "The Issues of the War" (March 18, 1919), two on the League (February 21 and November 19, 1919), and one on the Treay of Versailles (September 26, 1921).

These addresses on foreign policy, delivered on the occasion of so momentous a national decision, are of some historical significance.

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Probably they had a part in winning senatorial votes against the League, as they were delivered by one of the few senators whose utterances exert an appreciable influence upon the decisions of their colleagues. Their republication in this form invites an examination of the processes of reasoning and the mustering of evidence which they reveal.

Speaking at the most critical moment of the war, Senator Borah defined his idea of the conflict as whether there should exist as a world force the theory of Frederick the Great "which would make all human beings mere cogs in a vast military machine", or the idea of George Washington "which would make government the expression and the instrument of popular power". Military victory went to the side of Washington but in the clash of ideas those of Frederick the Great seem to have prevailed, for, speaking three years later, Senator Borah found in the Treaty every principle of Bernhardi. It was "the betrayal of a race . . . the most pronounced negation of the moral law which has yet been crystallized into form by the hand of man". That the character of the Treaty, however, was not the basis of Senator Borah's hatred of the League is indicated by the fact that in February, 1919, before the terms of the Treaty were known, he began his attack upon the Covenant. Throughout his two long speeches against the League runs what might be called the "George Washington *motif*". Everywhere the argument returns to the Farewell Address. On thirty of the sixty-three pages devoted to the League there is reference to the Washington policy or to its near relative, the Monroe Doctrine. That proponents of the League have argued that in the century since these doctrines were proclaimed conditions have greatly changed, Senator Borah is well aware. This answer "has been piped about of late from a thousand sources—venal sources, disloyal sources, sinister sources . . . . the puny demagogue, the barren editor, the sterile professor now vie with each other in apologizing for the temporary and commonplace expedients which the Father of our Country felt constrained to adopt in building a republic". Senator Borah is quite certain that this propaganda has been common since the Venezuelan affair.

The reply to the claim that the policy of isolation should be considered in the light of modern conditions is to set forth again the greatness of Washington. The first President ranks with Peter the Great, William the Silent and Cromwell the Protector as the builder of a state. "He led the Revolutionary army to victory. He was the very first to suggest a union instead of a confederacy. He pre-

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sided over and counseled with great wisdom the convention which framed the Constitution. He guided the Government during its first perilous years." Most of all, he gave "as his own peculiar and particular contribution . . . . his great foreign policy". Washington believed in isolation, Washington was a great man, therefore we should reject the League of Nations. Senator Borah, excellent lawyer though he may be, is thus reduced in his defense of the policy of isolation to the refuge of the advocate who is not certain of his evidence. He rests his case entirely upon a character witness.

In place of adherence to the League, Senator Borah proposes "an American policy". "Or if the word 'American' be considered by some as provincial or distasteful—a term of incivility—then let us have a humane policy, a Christian policy, a policy based upon justice, guided by conscience and made dominant by the mobilized moral forces of the world." Senator Borah does not issue the order of mobilization, he does not even indicate the means by which it may be consummated. He is hurt, though, by the taunt that such an "American policy" is the policy of "a little American". But he finds consolation in holding fast the better part of the epithet. "Call us little Americans if you will, but leave us the consolation which the term American imparts."

Throughout the book Senator Borah argues largely by historical analogy. Reject the League because Washington told us to avoid entangling alliances, recognize Russia because Washington recognized France, release political prisoners because the Fathers provided us with a Bill of Rights, enforce the Constitution because to refuse to do so would "indict the superb scheme of 1787", and do not recall judges because Jay, Marshall, Taney, Kent, and Story were judges. Occasionally an inaccuracy appears, as where he states that the Writ of Habeas Corpus was wrested from the King at Runnymede.

There is really no inconsistency between Senator Borah's opposition to the League and his advocacy of the recognition of Russia. The two points of view arise from the same conception of the modern state. America is self-sufficient. It is, to use Senator Borah's metaphor, a farm with a partition fence between it and Europe (p. 87). In like manner it is asserted that Russia's government and its internal economic adjustments are matters which should not concern the rest of the world. It is just another big farm inhabited by 140,000,000 "industrious, law-abiding, home-loving people".

Senator Borah's statecraft is not unlike his standard of conduct

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as a senator and a Republican. Independence is the ultimate good. Peace is desirable if it can be attained without the sacrifice of a scrap of independence. It is his sturdy personal independence which has so endeared him to the American people. But it is possible that he would reveal a higher quality of statesmanship if he were to recognize that independence is after all only one of a number of objectives with which a politician or a nation should be concerned.

RAYMOND MOLEY

COLUMBIA UNIVERSITY

Unemployment Relief in Great Britain: A Study in State Socialism. By FELIX MORLEY. Boston, Houghton Mifflin Company, 1924.—xviii, 203 pp.

Although this book takes up the history of unemployment relief in Great Britain for several decades back, it is primarily a study of England's experience with compulsory unemployment insurance and public employment exchanges. It is with regard to unemployment insurance that the book exhibits its chief virtues and its chief deflects. Lest the reviewer may later appear to have been too severely critical, he hastens to mention the fact that eminent authority awarded the book a second prize in the Hart, Schaffner and Marx prize contests. The study was begun as a graduate thesis for the London School of Economics and is the result of painstaking study abroad and here. Certain parts are specially helpful in showing practical aspects of the insurance acts and the administration of employment exchanges.

The book starts most interestingly. The confidence with which Mr. Morley makes assertions condemning the insurance system, and his air of having an important solution to contribute, increase the zest of the early pages. But soon one begins to have doubts concerning the author's infallibility. One feels that Mr. Morley had no initial personal prejudices, but has been carried away by the intensity of discovery and has not stopped long enough to balance all the factors involved.

The presentation seems the more partisan because of the excessive repetition of certain unconvincing assertions. For example, Mr. Morley does not merely present the facts and allow the reader to judge for himself whether state-operated unemployment insurance has succeeded or not. On the contrary, he states with an air of finality—and frequently—that it is a failure (e. g. pp. xi and 149).

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It is "a child of fair weather, incapable of withstanding a period of storm" (p. 29). His conclusion would leave us without hope. But why be so positive? The act which came into operation in Great Britain on July 15, 1912, applying to over two and a quarter million people, was an experiment. It had hardly had two years of operation when the war came. The act was broadened in 1916, to include a million and a half more workmen, and in 1920, to include eight million more. At the precise moment when the act came into force, there occurred one of the worst and most prolonged depressions in modern history. The eleven years which Mr. Morley reviewed were therefore extraordinarily unfavorable to such an experiment. On our part it seems better to reserve decision on the ultimate possibilities until the insurance system has been given a longer time and more normal circumstances in which to be tested.

What makes Mr. Morley's conclusion the more questionable is his eagerness to prove that unemployment insurance by industry is the sure remedy. That it is a possible remedy is conceded. But Mr. Morley goes further. He uses the single example in England of insurance by industry, that in the insurance industry itself, which has existed only since 1921, as proof of "the possibility, the practicality and the advisability of devolution" (p. 166). He himself knows that the insurance industry is the most regular of any, and that it has few of the problems of other trades. Its success in operating industrial insurance is chiefly a matter of routine administration, and the executives of that industry are by training eminently fit to administer insurance by industry.

Mr. Morley delights in calling the insurance payments "doles". If he uses this term once, he does it a score of times. This in spite of the fact that he admits that the laborers, as fast as they are getting back to work, are beginning to pay off the deficit the Unemployment Fund has incurred, so that in very few years the insurance scheme will become insurance in fact as well as in name. An example of how far the author's enthusiasm for certain ideas has led him away from practical considerations of social policy is his assertion that: "It would have been possible to maintain the solvency of the Fund without large Treasury loans, no matter how acute the depression, simply by refusing benefit to all except the small minority who could have proved eligibility if the various restrictions had been maintained or (in some cases of necessity) made even more rigorous" (p. 77). Simple indeed! Did Mr. Morley take into account the fact that there were starving millions to deal with at that time,

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and that talk of revolution was abroad in various countries, including Great Britain?

The positiveness of the author's convictions seems to be based, in large part, on the assurance which comes from knowing, after an event, what could have been done. He blames statesmen for not anticipating a depression—which he now knows to have been inevitable. He does not seem to realize, however, that insurance by industry would not be free from the same danger. An excess of optimism and a lack of foresight were a great deal more pervasive in industrial circles than among government actuaries. He shows that the Fund could have been kept from a deficit if the full 12,000,000 workpeople had been insured in 1912. He shows that if, in 1916, the Act had been extended to the full 12,000,000, it would have likewise been financially advisable. But was this the most pressing governmental problem at that critical period of the War? Looking backward it is always easy to point out mistakes of policy, but these should be considered in relation to the totality of circumstances.

In addition to asserting that the insurance system is a failure and its payments nothing but doles, Mr. Morley indicts it on the ground that, "It is largely because of unemployment insurance that the employment exchanges are not functioning properly in their true capacity" (p. 10). His argument that, taking it all in all, the exchanges would have been functioning better to-day if unemployment insurance had not been administered by them, is not in the least convincing. For they might have been scrapped altogether, as was true in the United States. He himself admits that "the one factor that has insured continuation of the Exchanges during the post war economy campaign is . . . realization that the Unemployment Insurance Acts could not operate without them" (p. 11). One could say more. The very burden of handling a huge financial business of disbursements has tended to make the employment exchanges more systematic and responsible.

The reviewer believes that objection may be raised to several other assertions in this book. Its chief use, therefore, is for specialists in the subject who have independent knowledge of some of the topics treated and who are able to use Mr. Morley's study as an expression of a point of view.

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BOOK NOTES

In seeking to give precision to the word "liberal", so common to American political discussion, one is usually reduced to the process of citing human embodiments of that indeterminate "faith". There is Borah, the statesman, for example, and McAdoo, the administrator and lawyer. Among editors no names come so readily to mind as those of William Allen White and the late Frank M. Cobb. An examination of the views of these famous editors is greatly facilitated by the publication of the selected editorials from the *World* and the *Emporia Gazette* in John L. Heaton's *Cobb of the "World"* (New York, E. P. Dutton and Company, 1924; xxvii, 397 pp.) and *The Editor and His People:* editorials by William Allen White, selected by Helen Ogden Mahin (New York, The Macmillan Company, 1924; xiii, 380 pp.). Mr. Cobb is designated in Mr. Heaton's subtitle "A leader in Liberalism" and in Woodrow Wilson's foreword as a "liberal" thinker. Mr. White classifies himself in his foreword as a "progressive rampant". These editors were contemporaries in the significant years from the rise of the Progressive movement to the end of the war, although Mr. White bought the *Gazette* in 1895, while Mr. Cobb was not brought to the *World* by Joseph Pulitzer until 1904. The dominant issues of the twenty years during which Mr. Cobb wrote editorials for the *World,* such as Mr. Roosevelt's battle for his "progressive principles", the movement to restrict the political activities of corporations, the issues of the war, the League of Nations, and "free speech" during and after the war, are amply discussed in Mr. Cobb's editorials. His most distinctively individual contribution is that in which he advocated a sweeping revision of the Constitution of the United States. For "direct government" through the initiative, referendum and recall he had little sympathy. Neither did he believe in the piecemeal amendment of the Constitution, nor in the gradual encroachment of federal upon state power. A straightforward facing of the facts through a new federal constitutional convention was in his opinion essential to the orderly progress of democracy. For Woodrow Wilson, Charles E. Hughes and Alfred E. Smith, Mr. Cobb had unqualified admiration. With Theodore Roosevelt he was constantly at war, in fact one of Mr. Pulitzer's reasons for employing him was the news which

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he received of a combat that Mr. Cobb had waged with Mr. Roosevelt through the columns of the *Detroit Free Press*. The *World*, under Mr. Cobb's editorship, was the object of Mr. Roosevelt's famous libel suit of 1909. Mr. White's interests seem to be much more diverse. On every conceivable subject of public interest over a period of thirty years Mr. White wrote with definiteness and conviction. In general his preferences were similar to those of Mr. Cobb. He supported the League of Nations, and like Mr. Cobb greatly admired the policies of Woodrow Wilson. Like Mr. Cobb he wrote at length against what seemed to him an undue restriction upon freedom of speech after the war. He favored the liberation of Mr. Debs; he opposed the New York Legislature in expelling the Socialists. Curiously enough the Kansas editor was more concerned with labor questions than was Mr. Cobb. There is a quaint simplicity in Mr. White's view of labor problems. They are viewed without much statistical data, but in simple human terms. In the shopmen's strike he said, "The boys have a kick coming." His editorials are punctuated with homely truisms which are actual short-cuts to understanding rather than the tawdry, insincere ruralisms of some of his contemporaries in the Corn Belt. An excellent example is his remark concerning the "red menace" of 1919-20: "the blood of martyrs has done more to spread their fool doctrines than their brains." In the "middle class" Mr. White's hope of reform always reposes. "This is not just. The working class should have some say-so whether it will take workingmen's compensation laws, mother's pensions, eight-hour days, child labor laws or what not of social reform." But the liberal should support this sort of a program rather than the formation of workers' parties or the strengthening of socialism. Personal journalism will not disappear so long as the *Emporia Gazette* enjoys its present management nor will the "under dog" lack a loyal supporter.—R. C. M.

Le Monde Slave (Revue mensuelle, Librairie Félix Alcan, Paris; No. 1, Novembre, 1924) is being issued in Paris to aid in the spreading of information about the Slavs and to promote the rapprochement of the Slavonic nations and France. It is in a way an extension of the work of the Institut des Études Slaves and is frankly a continuation of the program of the late Ernest Denis who played so prominent a rôle in the liberation of the Slav nations. M. Denis died unfortunately soon after the ending of the war, but M. Eisenmann, his successor in the Institut, is continuing his work and achieving remarkable results. With this ancestry, we need not be

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surprised that the journal regards Germany as the great enemy of the French and of the Slavs alike. One of the editors, M. Fournol, asserts that the criticism of Slavonic political ability was a German invention (p. 28). The German-Slav struggle is viewed as a series of conflicts in which the Germans were the aggressors, and in fact the Germans admit this point with the explanation that their advance was connected with their civilizing mission. The ultimate question then is the superiority of German or Slav civilization. We need not add that on this the French and the Germans will of necessity have different views. It may be said without exaggeration that the French point of view is shared by almost every Slav statesman of prominence, all Slavonic groups and all Slavonic scholars. It formed the basis of the Congress of Slav Geographers and Ethnographers held at Prague in June, 1924. We will not err in seeing in this journal the virtual mouthpiece of the new Slavonic nations. Yet we must not conclude from the above that the articles are to be classed as propaganda. They are serious studies of the conditions in Central Europe from the point of view of the inhabitants and they render this journal perhaps the most satisfactory of all the similar papers which have come into being since the World War. In addition to the articles, the editors are undertaking a summary of important documents dealing with Slavonic affairs and of important controversies which are being carried on among the Slav groups. This, if it is continued as in the first number, may easily come to be the most valuable part of the journal, because it will give in convenient form a synopsis of the situation and feeling as it is developing constantly. As a whole, then, we can greet *Le Monde Slave* with thanks and only express the hope that it will live up to the standard which is set by its first number.—C. A. M.

Among the hundreds and thousands of books dealing with the revolutionary movement and the Bolshevik régime in Russia, Karl Nötzel's *Die Soziale Bewegung in Russland; Ein Einführungsversuch auf Grund der russischen Gesellschaftslehre* (Stuttgart and Berlin, Deutsche Verlags-Anstalt, 1923; 556 pages) stands almost unique. It is primarily a philosophical essay, representing an attempt to explain the essence of Russian sociological thought as influenced by the peculiar historical development and by the extraordinary conditions resulting from this evolution. The danger involved in writing a book of this kind is always that the particular aspect of the problem which interests the writer is overemphasized. To be sure, the philosophical side of Russian revolutionary thinking

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has been sadly neglected, and the author is to be thanked for his study of Nihilism as a sociological theory and for his pioneer effort in tracing the transition from Nihilism to Marxism and Bolshevism. One cannot help but agree with his conclusions that the peculiar Russian outlook originated in the geographical conditions, in the teaching of the Orthodox Church, in the extreme aggravation of the social problem by the existence of serfdom, and in the unprepared contact with western philosophy and social thought. These points, of course, have been stressed by previous writers, and one lays down the book with the distinct impression that the author has overdone systematization. The impression may in part be due to the fact that the work is neither well written nor well arranged. The style is that of the old-fashioned German philosopher, with ponderous, involved sentences and impossible constructions, and it is hardly too much to say that the value of the work for the general reader is greatly vitiated by the complicated dialectical treatment. Objection might also be raised to the arrangement of the material, which cannot be called a happy one. The general philosophical reflections might well have been dispensed with, and it is hard to understand why Book III should in large measure repeat what had already been said in Book I. Books IV and V are almost entirely taken up with general considerations of the significance of Russian social thought for Russia and for the world. The book is, in brief, a commendable, indeed a significant and valiant attempt to get at the bottom of an all-important problem, but it is to be greatly regretted that the results of the writer's extensive investigations could not be more tersely and succinctly presented, and that the book is not more suitable for the average reader.—W. L. L.

Social institutions and customs vary from nation to nation, and according to time and place. They are relative, not absolute. If any English-speaking sociologist has failed to note this, especially since the publication in 1907 of William Graham Sumner's *Folkways*, he has no excuse. In *The Principles of Comparative Sociology* (London, Watts and Company, 1924; xi, 191 pp.) Dr. Nicholas Petrescu has grasped the comparative and relative viewpoints and appears to believe that he has discovered material for a new science. His book is labeled a "first attempt at a Comparative Science of Society". This new science, while recognizing the "physical motives" that underlie society ("climate, soil, race, and the struggle for existence") finds its data in the "moral motives", or what American anthropologists term "culture". The author is appar-

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ently unfamiliar with much of the recent work in anthropology, particularly of the American school, for he uses the latter term in a popular sense. His book is at best a demonstration, through some collection of illustrative material, of the need of a scientific cultural approach to social differentiation. But Boas and his followers in America, as well as some eminent countrymen of the author, have long been engaged upon this very thing — the American group at least with a highly developed *technique*. In view of the *fait accompli*, an expression of the need is obviously not a scientific contribution of high order, much less a new science, even though the author agrees closely in many of his conclusions with scientists who are in the field. The failure to make use of existing terminology for concepts which have already attained scientific precision, and to define other terms clearly makes the book somewhat difficult reading for the professional student, while its style of seeming profundity will impair whatever possibilities of popularization it might otherwise possess.—S. A. R.

Alfredo Niceforo, professor of statistics in the University of Naples, is the author of no less than seventeen volumes dealing with anthropological, anthropometrical and sociological materials. These have been written in Italian, French or German, with frequent translations from one to another, and also into Spanish. His first treatise dealing with statistical methodology was entitled *La Misura della Vita*, published at Turin in the *Biblioteca di scienze moderne* in 1919. In 1923 this work was republished after extensive revisions under the title *Il Metodo statistico*. The latter now appears in translation in the *Bibliothèque internationale d'économie politique* (published under the direction of Alfred Bonnet) with the title *La Méthode statistique et ses applications aux sciences naturelles, aux sciences sociales et à l'art* (Paris, Marcel Giard, 1925; viii, 652 pp.). The greater part of the book deals with the statistical treatment of variables, while the last hundred or more pages are devoted to the theory of attributes. The author shows familiarity with English and American as well as Continental sources, and he has contributed methodological suggestions, particularly in his treatment of association, contingence and correlation, that should be of value to the English student. The latter will be impressed most of all, however, by the wealth of "Applications", or illustrative material that has been introduced from unusual directions. For example, the author gives comparative analyses of the numbers of vowels and consonants contained in different languages; the distribution by length of the

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odes of Horace and by height of Greco-Roman statues. Astronomy, geology and botany furnish illustrations, while the variety of anthropometrical data is wide. The influence of Lombroso is suggested by the data from criminology; for example, by an examination of contingence between coloration of the iris and types of crime. Unfortunately, the paper binding of this book of 650 pages is particularly atrocious, and will have to be replaced by those who wish to give it the amount of use to which it is entitled.—S. A. R.

Perhaps a majority of the students of the social sciences in America have formed their opinions of Auguste Comte essentially from the appraisal by John Stuart Mill. It is the earlier work of Comte, particularly the *Cours de philosophie positive,* upon which his fame as the father of their subject depends among sociologists. Over his later work, his *Système de politique positive,* his "religion of humanity", they are prone to pass in silence, firm in the benevolent conviction (inspired by Mill) that oblivion is the most kindly fate for a Comte of declining mental powers. This academic stereotype is stoutly and convincingly disputed by Dr. McQuilkin DeGrange, who has subjected the life and works of Comte to an examination and analysis probably more thorough than any hitherto given them. On the basis of this inquiry, entitled: *La Courbe du mouvement sociétal. Étude de dynamique sociologique d'après la politique positive d'Auguste Comte* (Paris, Librairie-Bibliothèque Auguste-Comte, 1923; 304 pp.), the scholarly and painstaking nature of which has been warmly attested by members of the faculty of the University of Clermont, the later Comte appears in a wholly new light. He becomes the philosopher of maturing powers, whose untimely death alone prevented the appearance of two works that would have represented his ripest thought and his most significant contributions to a science of society. The explanation of the current view concerning this period of his life is to be found in the bald fact that Mill and other interpreters simply failed to grasp the meaning and purpose of the Frenchman's later endeavors. Comte was ahead of his time, and the present generation that is intellectually prepared to understand him has not taken the trouble to do so. Thus the "religion of humanity" was not the fruit of dotage, but rather one of the world's first experiments in the deliberate application of sociological principles for the achievement of social control. In his volume Dr. DeGrange has developed the definition of sociology toward which he believes that Comte was working in these later years. He finds its essentials in the twin principles of mutual cooperation and cul-

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tural accumulation. This result is reached following a logical continuation of the process of analysis employed by Comte in developing his hierarchy of the sciences. If the conclusion respecting the proper field of sociology as a scientific pursuit is truly Comtian, as the author certifies, his contention of the modernity of his master seems well supported. This book is an important contribution to the history and theory of sociology. It is genuinely to be hoped that an English translation will soon be available for the American public. —S. A. R.

Few students of the history of ethnological thought would hesitate to admit that the late Dr. W. H. R. Rivers made highly important contributions to the theory and methodology of cultural diffusion or that every book by the eminent British physiologist, psychologist and ethnologist should be carefully studied. But when Mr. G. Elliott Smith solemnly announces in the preface to Dr. Rivers's posthumous work, *Social Organization* (London and New York, Alfred A. Knopf, Inc., 1924; x, 226 pp.) that "the book is certain to be the standard textbook upon a very difficult subject", one is forced to season this pupillary enthusiasm with a grain of critical salt. For certainly in a "standard" textbook on social organization it is indispensable that the exposition should be based upon the widest possible survey of the pertinent materials and that the student should not be unduly influenced by the author's methodological idiosyncrasies. So long as Dr. Rivers confines himself to the task of distinguishing between, describing, defining and classifying the various kinds of human grouping—the family, clan, moiety, tribe etc.—he is illuminating and convincing, though he presents nothing which cannot be found, in more readable form, in the works of Giddings, Goldenweiser and Lowie. But when he passes from the static study of social organization to chronological reconstructions and dynamic interpretations, he uses so many "ifs", presupposes so many "*ceteris paribus*", hypothecates so many unverifiable factors that the discriminating reader is forced to conclude that here we have brilliant guessing, but not scientific explanation. While the author is, perhaps, more cautious than in his two previous works, *The History of Melanesian Society* and *Kinship and Social Organization,* which are companion volumes to *Social Organization,* he still manifests the tendency to substitute logical inference for historical facts. Perhaps this tendency has been somewhat accentuated by the editorship of Mr. W. J. Perry, who in a quite unnecessary appendix dealing with the dual organization gives us, unintentionally of course,

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almost the *reductio ad absurdum* of one of Rivers's well-known theories of cultural diversification. This appendix by Perry will greatly lessen the value of the book in the eyes of the experts. Even the intelligent lay-reader will be inclined to regard it as a fantastic ethnological bed-time story. *Social Organization* is the first volume of a new social science series entitled *The History of Civilization,* edited by C. K. Ogden, M.A., of Magdalen College, Cambridge.—R. G. S.

Three decades of experience in South End House, Boston, and of leadership in the settlement movement in America, lend authority to the contentions of Robert A. Woods in his volume, *The Neighborhood in Nation Building* (Boston, Houghton Mifflin Company, 1923; viii, 348 pp.), that in the less favored sections of American cities there is great need for a social rather than political bond, and that on a basis of neighborhood association. In reprinting twenty-eight papers presented at various times before many groups in the last generation, there has been brought together the best portrayal of the purposes, the development and prospects of parish organization for cultural, political and social betterment. Settlements are said to be of "three main drifts": communal, educational, mediatory. They are said to supply leadership to barren districts from "a small capable group". There are a few chapters interesting chiefly as history of one group of workers; those on the interpretation of community organization from the standpoint of the cultural pioneer are interesting and well worth while.—L. E. B.

Among the recent contributions to the post-war agrarian history of eastern Europe, Ifor L. Evans's book on *The Agrarian Revolution in Roumania* (Cambridge, University Press, 1924; xvi, 197 pp.) is one of the fullest and most painstaking. The difficulty of the task, due to the intricacy and diversity of the phenomena described, as well as to the unfamiliarity of most western Europeans with life in southeastern Europe, is ample excuse for any shortcomings which may strike the eye of the person interested in technical details. To begin with, the Old Kingdom of Rumania, as of 1914, underwent sweeping reforms. The part of the Dobrudja taken from Bulgaria in 1913 had not been economically assimilated when the war began. Bessarabia was taken from Russia. With a background of Russian rule, the problem of land reform was even further complicated by the fact that certain drastic reforms were undertaken before the Rumanian occupation. Still a different problem was presented by the lands taken from Austria-Hungary, where it was necessary to build upon another historical and racial foundation. Bearing all

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these difficulties in mind, the author seems to feel that the Rumanians have done very well. His book gives a very clear and fairly full picture of what has actually been accomplished. Many readers will feel that more references, and some sort of bibliography, would have improved a book on so special a subject. Those interested in the cooperative movement will be disappointed to find only about three pages altogether on this rather important aspect of Rumanian village life. Some reference to the Slavic land systems on either side would have lent vitality to the historical chapters, which, accurate and painstaking as they are, nevertheless stand in a sort of chilly isolation from their eastern European setting.—M. M. K.

The question of oil in international politics has received a very solid and intelligent contribution in Alexandre Gane's book, *Le Régime minier roumain et la nationalisation du sous-sol* (Paris, Jouve et Cie., 1924; 214 pp.). Giving only the historical background essential to an understanding of the recent controversy, Dr. Gane devotes the bulk of his treatise to an explanation of the status of foreign capital in the Rumanian oil business, and of the means whereby the new law is expected to cure some genuine abuses. He is very careful to dispose of the notion that "nationalization" has anything in common with "socialization". To "nationalize", as the Rumanians understood it, means simply to "Rumanize"—that is, to curb exploitation purely for the benefit of foreign corporations. The book is a moderate, carefully worked out defense of a law already passed which the author thinks will prove useful in practice. This author knows Rumanian economic realities extremely well. Anyone who thinks that there is no case for the sort of defense of its own natural resources which this small state is employing against the economic imperialism of larger neighbors will do well to go through this work with care. There are ample page references, an appendix reprints the most important documents, and a short bibliography of the essential sources is appended.—M. M. K.

In these democratic days, when the people are supposed to decide the most momentous political and economic questions, it seems obvious that they should be well versed in economic science, that they may contribute to intelligent discussion and wise decision. To that end, not long ago, Dr. Fabian Franklin published in *The Independent* a series of articles, which now have been bound together in book form under the title *Plain Talks on Economics* (New York, G. P. Putnam's Sons, 1924; ix, 353 pp.). About a third of the book is given to elementary principles and the rest to brief and

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simple discussions of monopoly, trade-unionism, coöperation, profit-sharing, taxation, protection and free trade, socialism, and other questions of the day. And although it is all fairly elementary, the relation of theory to practical problems is clearly seen. Of course, as the author knows, economics cannot be simplified beyond a certain point. Yet something can be done along this line, and here we find the basic principles and results of economic science presented in such a way as should clear the reader's mind of prejudice, arouse his interest and put him on the road toward broader and deeper knowledge. There is danger, no doubt, that some readers may think that they have mastered the science and proceed to apply their half-knowledge in foolish and dangerous ways. But this should not be so in many cases, for with all his clear style and lucid exposition, the author indicates difficulties on every side, which should convince the intelligent reader that without much study he cannot be his own economist. As a former pupil of J. J. Sylvester and Simon Newcomb, and a distinguished mathematician and journalist, Dr. Franklin is peculiarly fitted for the task which he has so successfully accomplished, and his work would not discredit a professional economist. *Plain Talks* should be a good introduction for high school students, as well as for the general reader, although some might think it too conservative, inasmuch as the author, while repudiating the old-fashioned *laissez faire,* is a keen critic of popular fallacies and frankly skeptical of many proposals for social reform.—J. E. LeR.

The motivating impulse of Willard E. Atkins and Harold D. Lasswell to write *Labor Attitudes and Problems* (New York, Prentice-Hall, 1924; xi, 520 pp.) was an admirable one. They felt, as they say in their introduction, that too much attention has been given in most labor texts to the analysis, as it were, of the symptoms of diseases and far too little to the pathologic background out of which they come. "We have specialized in splints and bandages without the prerequisite course in general anatomy." This book should have been the "general anatomy" of the "workers". It must be said to fall somewhat short, however, of the accomplishment of this aim. The discussion of attitudes, the beginning section, is far too brief to be of much value. Besides this, too, its method is too formal. One lacks the feeling, after having read it, of knowing better, for instance, what a casual laborer feels like or how he responds to typical stimuli. The groups considered here are, besides the casual, the miners, the agricultural workers, steel workers, clothing makers

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and unskilled women operatives. The following section outlines the position of workers under machine industry. Here again the description is formal—and familiar. There is a real thrill in the next section on "Standards of Living", however. The case study of Mr. and Mrs. E. lets us into their minds. We understand why they act. But the reality soon fades into the familiar statistics and the last sections on "The Struggle for Status" and the "Assertion of Public Interests" furnish no new data or approaches. The general criticism that must be made is that the authors did not do what they promised in the introduction. They wrote another text on labor—more up-to-date than the rest, and therefore useful—but not more illuminating.—R. G. T.

The publication in 1923 of the fourth volume of the *Cambridge Medieval History* upon the Eastern Roman Empire made available to scholars a summary of the recent advance in Byzantine history. Mr. George B. Ives has now done a distinct service in the same field by translating into English Professor Charles Diehl's *Histoire de l'Empire Byzantine* (*History of the Byzantine Empire,* Princeton, Princeton University Press, 1925; xi, 199 pp.). This English version of Diehl's compact study of the nine hundred years of Byzantine history, stretching from the accession of Justinian to the fall of Constantinople, deserves a wide sale. It has no worthy competitor as an introduction for general readers of history and for more serious students who have not the time to master the medieval history of the Eastern Mediterranean lands as presented in the formidable scholarship of the *Cambridge Medieval History*. The translator has done his part well, with no comment of his own and with an obvious desire to retain as far as possible the lucidity of style which is characteristic of Diehl's book. He has gone so far as to retain Diehl's computations of sums of money in *francs* and *sous* in gold (pp. 95-96). It is rather too bad that he did not put these sums into pounds sterling or into dollars.

An interesting travel book, human and humorous in its episodes, is *Glimpses of Japan and Formosa,* by Harry A. Franck (New York, The Century Company, 1924; ix, 235 pp.). The unusual is attained by his description of out-of-the-way places, little known peoples and customs. It is, however, the utterance of a stranger describing strange things rather than a comprehending analysis by one who through years of association has become an understanding friend. The volume, though profusely illustrated, contains no table of contents, no chapter headings and no map, all of which would be appreciated by the ordinary reader.

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